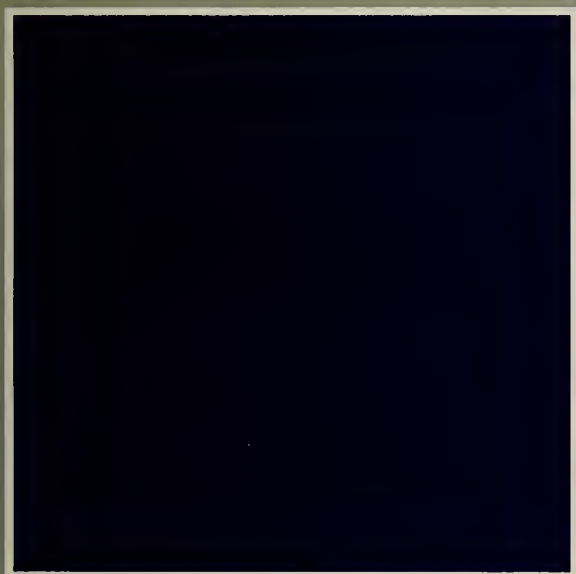


WSIAT
006



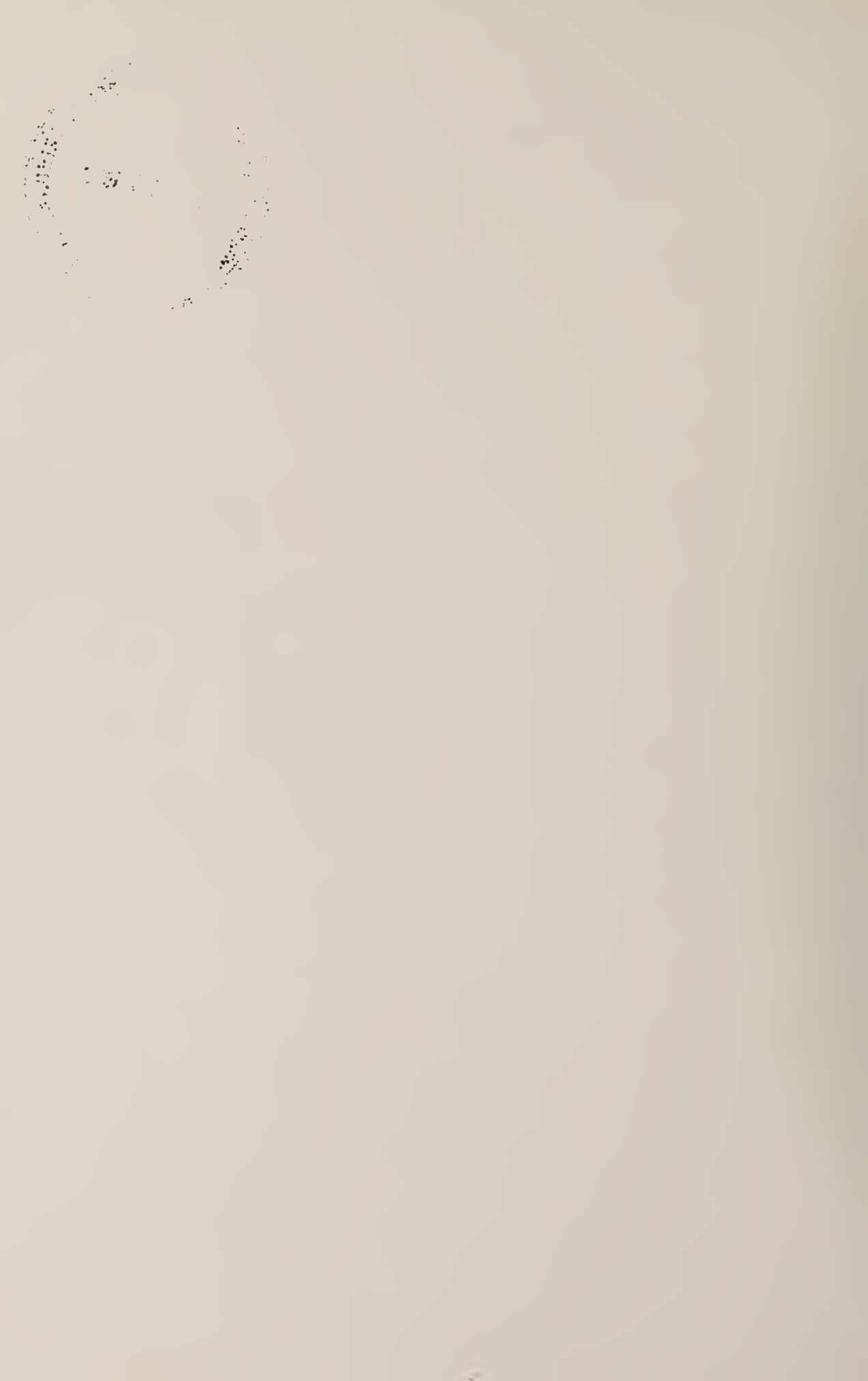
Annual Report 1991

Annrep.
Ont.
W.C.A.T
1991 C.1



Ontario

Workers' Compensation Appeals Tribunal
Tribunal d'appel des accidents du travail

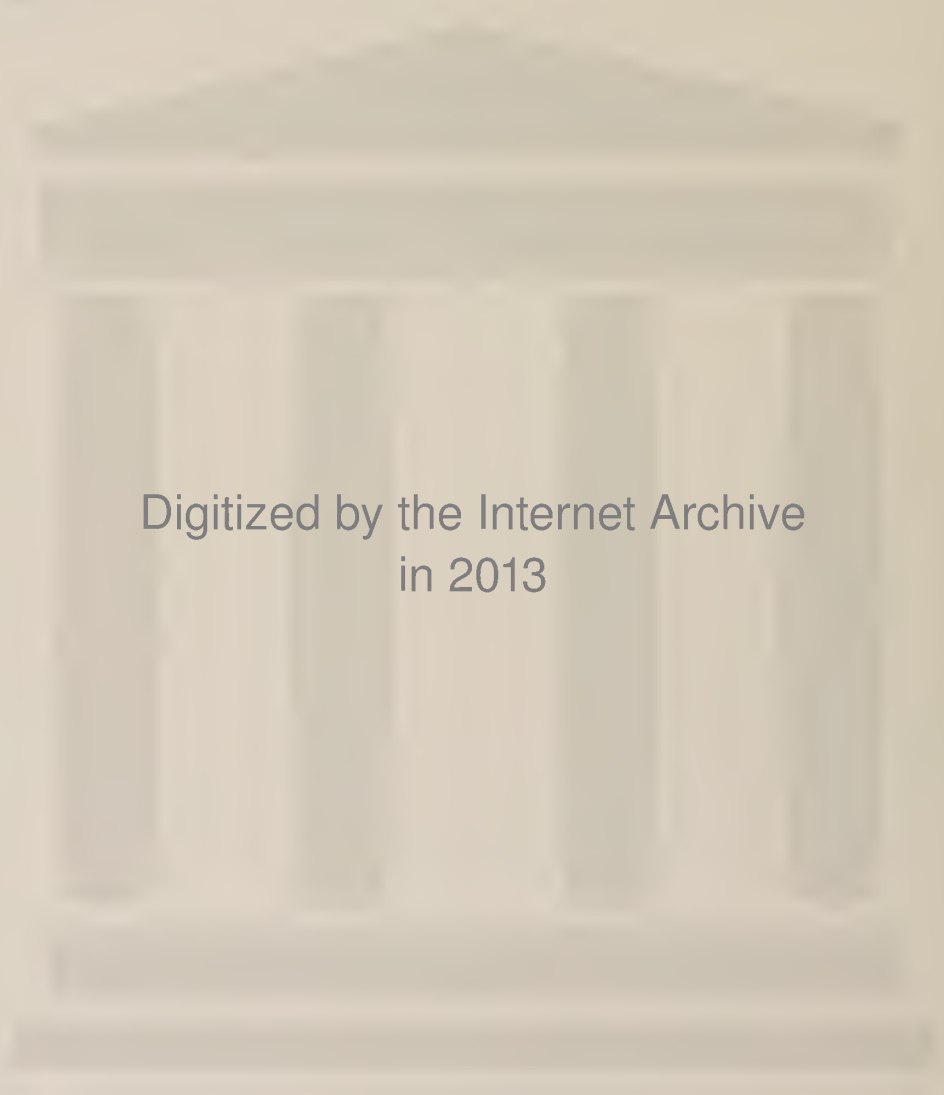


ANNUAL REPORT 1991



Ontario Workers' Compensation Appeals Tribunal
505 University Avenue
7th Floor
Toronto, Ontario
M5G 1X4

ISSN: 1181-6031
© 1992



Digitized by the Internet Archive
in 2013

Contents

INTRODUCTION	v
--------------	---

REPORT OF THE TRIBUNAL CHAIR

TRIBUNAL'S PERFORMANCE:	
CHAIR'S ASSESSMENT	1
Decision Quality and the Problem of Complexity	1
The Hearing Process	5
Backlog	6
INFORMATION TECHNOLOGY	9
ADVISORY GROUP	10
ALTERNATE CHAIR	11
TRIBUNAL ALUMNI	12
HIGHLIGHTS OF THE 1991 CASE ISSUES	12
Re-employment Under Bill 162 Amendments	12
Occupational Stress	13
Occupational Disease	14
Chronic Pain and Fibromyalgia	14
Transfer of Costs Between Employers	15
Classification of Employers	16
Miscellaneous	16
JUDICIAL REVIEW ACTIVITY	16
Other Matters	17

THE TRIBUNAL REPORT

THE APPEAL PROCESS	19
VICE-CHAIRS, MEMBERS AND STAFF	21
TRIBUNAL COUNSEL OFFICE	21
Intake	21
Case Description Writers	21
Pre-hearing Legal Workers	21
Lawyers	22
Medical Liaison Office	22
Post-hearing Legal Workers	24
INFORMATION DEPARTMENT	24
Publications	24
Library Highlights	25
SYSTEMS DEPARTMENT	26
Case Tracking	27

YEAR END STATISTICAL SUMMARY	28
Introduction	28
Cases Received	29
Cases Closed	31
Case Completion Times	32
Hearings and Decisions	35
Cases in Inventory	38
FINANCIAL MATTERS	39

APPENDIX A

VICE-CHAIRS AND MEMBERS IN 1991	43
VICE-CHAIRS AND MEMBERS — RE-APPOINTMENTS	45
VICE-CHAIRS AND MEMBERS — EXPIRED APPOINTMENTS AND RESIGNATIONS	46
NEW APPOINTMENTS DURING 1991	47
SENIOR STAFF	49
MEDICAL COUNSELLORS	49

APPENDIX B

REPORT AND FINANCIAL STATEMENTS DECEMBER 31, 1990	51
--	----

INTRODUCTION

The Workers' Compensation Appeals Tribunal is a tripartite tribunal established in 1985 to hear appeals from the decisions of the Ontario Workers' Compensation Board. It is a separate and self-contained adjudicative institution, independent of the Board.

This report is the Tribunal Chair's and the Tribunal's annual report to the Minister of Labour and to the Tribunal's various constituencies. It describes the Tribunal's operational experience during the reporting period and covers particular matters which seem likely to be of special interest or concern to the Minister or to one or more of the Tribunal's constituencies. The reporting period for this report is the 1991 calendar year.

This is the third annual report to be titled "Annual Report" and to cover a calendar year. The first three reports, distinctively titled because of their special role in recording the Tribunal's formative years, were the First Report, the Second Report, and the Third Report. They cover respectively the periods of October 1, 1985, to September 30, 1986; October 1, 1986, to September 30, 1987; and the fifteen-month period from October 1, 1987, to December 31, 1988.

This Annual Report comprises, in effect, two reports: The Report of the Tribunal Chair and The Tribunal Report. The Report of the Tribunal Chair reflects the personal observations, views and opinions of the Chair. The Tribunal Report covers the Tribunal's activities and financial affairs, and developments in its administrative policy and process.

REPORT OF THE TRIBUNAL CHAIR

TRIBUNAL'S PERFORMANCE: CHAIR'S ASSESSMENT

It is my considered opinion that again in 1991 the Tribunal may be fairly said to have discharged its statutory responsibilities appropriately and efficiently. Completion times were better than in 1990 or 1989, the quality of decisions remained high, the Tribunal's procedures and process continued to meet with general acceptance, and expenses were held within budget.

Decision Quality and the Problem of Complexity

In this year's assessment, I would like to address the subject of the nature and quality of the Tribunal's decisions. The quality and appropriateness of its decisions are the most important measurements of success for this Tribunal, but in recent annual reports I have not had the opportunity to examine the Tribunal's performance in this key area.

It is difficult to have standards of decision quality that are capable of a wholly objective assessment. The Tribunal, however, has a set of "hallmarks" of decision quality against which it measures its decisions. A list of these hallmarks is found on page 2. They were approved in written form in 1989 as part of the Tribunal's Statement of Mission, Goals and Commitments and I remain confident that they are standards of decision quality that are appropriate and necessary for this Tribunal.

Judged against those standards, the general quality of the Tribunal's decisions has been, and continues to be, in my opinion, excellent.

I base my opinion most confidently on my own professional assessment of the many decisions that I read in the normal course of my duties, particularly those which I encounter while administering requests for reconsideration of Tribunal decisions. However, my opinion is confirmed by a number of objective sources.

These include, first, the informal feedback from professional workers' compensation advocates. This feedback, while sometimes indicating disappointment with the results in particular decisions, continues to reflect a reasonable level of respect for the Tribunal's decisions generally.

HALLMARKS OF DECISION QUALITY

The Tribunal is committed to devoting its best efforts to having Tribunal decisions comply reasonably with the following hallmarks of a good-quality adjudicative decision:

- (a) It does not ignore or overlook relevant issues fairly raised by the facts.
- (b) It makes the evidence base for the panel's decisions clear.
- (c) On issues of law or on generic medical issues, it does not conflict with previous Tribunal decisions unless the conflict is explicitly identified and the reasons for the disagreement with the previous decision or decisions are specified.
- (d) It makes the panel's reasoning clear and understandable.
- (e) It meets reasonable standards of readability.
- (f) It conforms reasonably with Tribunal standard decision formats.
- (g) From decision to decision the technical and legal terminology is consistent.
- (h) It contributes appropriately to a body of decisions which must be, as far as possible, internally coherent.
- (i) It does not support permanent conflicting positions on clear issues of law or medicine. Such conflicts may occur during periods of development on contentious issues. They cannot be a permanent feature of the Tribunal's body of decisions over the long term.
- (j) It conforms with applicable statutory and common law and appropriately reflects the Tribunal's commitment to the rule of law.
- (k) It forms a useful part of a body of decisions which must be a reasonably accessible and helpful resource for understanding and preparing to deal with the issues in new cases and for invoking effectively the important principle that like cases should receive like treatment.

A second source is the reports that the Ombudsman makes to the Tribunal following her investigations of Tribunal decisions pursuant to complaints that she receives from workers or employers who have been unsuccessful at the Tribunal. In the first place, the number of Ombudsman complaints in workers' compensation matters has dropped dramatically from pre-1985 levels. This in itself indicates increased acceptance of Tribunal decisions, even by losing parties. More to the point, however, is that a high proportion of these complaints are found by the Ombudsman to be unsubstantiated.¹ Her reports to the unsuccessful complainants, following a full investigation by her expert workers' compensation staff, continue to reflect a thorough respect for the general quality of the Tribunal's decisions.

A third source of objective confirmation of the decisions' quality is the small proportion of decisions which are the subject of applications to the courts for judicial review and the respect that the Divisional Court has given to the decisions which have come before it.

¹ In 1991 the Ombudsman reported on complaints in 106 cases and found reason to doubt the reasonableness of the decision in only six. (These were treated by the Tribunal as amounting to a request for reconsideration and were referred to reconsideration panels.)

The 1990 Coopers and Lybrand Report, which was referred to in the 1990 Annual Report, also confirmed the quality of Tribunal decisions. The Tribunal, it said, "renders high-quality adjudicative decisions which are fair, balanced, consistent and fully-reasoned".

However, as good as the decisions may be, it is essential to recognize that the Tribunal frequently finds itself unable to write them in language simple enough for the parties to the case to understand. The Coopers and Lybrand Report noted this reality and while praising the general quality of the decisions called for increased efforts at simplifying the language.

I believe it is important that the permanent record of the Tribunal's work, which these annual reports provide, include a full examination of this problem of the complexity of Tribunal decisions. It is for that purpose that I address the problem here.

The problem, I note, is not in fact as extensive as is sometimes thought. The length of decisions is usually seen as one of the indicators of complexity and statements about the complexity of the Tribunal's decisions are unduly influenced by what seems to be a general impression that the Tribunal's decisions are *typically* long decisions. That impression is mistaken.

When the ordinarily very short decisions on issues such as access to files are excluded, and the remaining 636 decisions (in effect, the decisions about entitlement and the level of benefits) that were released in 1991 are listed in order of the length of decision, the following information emerges:

1. The first 25 per cent (159) of the decisions on that list average 4.2 pages.
2. The second 25 per cent, 6.2 pages.
3. The third 25 per cent, 8.0 pages.
4. The final 25 per cent, 15.9 pages.
5. The *median* decision length is 7.0 pages.
6. Only 26 decisions (4 per cent of the total) exceed 20 pages and only four decisions run to 50 pages or more.

I must also emphasize that the Tribunal has always valued and encouraged simple and readable writing. To that end we have organized in-house decision-writing seminars and have supported decision-writing programs offered by other organizations. We have also acquired a grammar and style checking computer program. This program analyzes writing against various standards of simplicity, and our decision writers are encouraged to check their writing from time to time through analysis by that program. In my opinion, for the most part, the Tribunal's panel chairs do write clearly and simply.

The fact remains, however, that many of our decisions will not be understandable to some of the parties to the case. The Tribunal often has to rely on the parties' professional representatives or its own staff to explain the decision to the parties. This situation is highly regrettable, but the Tribunal's constituencies must understand that for a significant number of cases the situation cannot be corrected. It is a problem that stems from the very nature of the workers' compensation subject and is built into the role which the Tribunal must play in the workers' compensation system.

The difficulty is rooted in the Tribunal's commitment to explaining fully in writing why it came to the conclusion that it did in a particular case and why it could not accept the submissions of the unsuccessful party. The Tribunal's obligation to give reasons for its decisions is specified in the statute, but full reasons for the decisions are also essential from a policy point of view. The problem with the commitment to full reasons, however, is that these reasons frequently are inescapably complex.

This unavoidable complexity has a number of roots.

First, the nature of the Tribunal's reasons is to a large extent dictated by the nature of the Tribunal's role within the workers' compensation system. As the final appeal body in a system where there is no right of appeal to the Courts, the Tribunal is responsible for functions that go well beyond making fair decisions in individual cases. They include the resolution, on a consistent and system-wide basis, of problems that involve: ambiguous statute language; the definition of the limits of entitlement in cases at the margins of the system's coverage; controversial medical or scientific issues; and the supervision of the system's commitment to treating like cases in a reasonably like manner. To properly fulfil these functions the Tribunal's decisions must be concerned with underlying principles and reconciling themes.

Second, the factual, medical, scientific and legal issues facing the Tribunal are often, unavoidably complicated. Cases that reach the Tribunal (about 1 to 2 per cent of the system's total caseload) commonly involve such issues as jurisdiction, standards of proof, the role of presumptions, the implications of epidemiological studies, burdens of proof, conflicting or inconclusive expert medical or scientific evidence, retroactivity, the interpretation of ambiguous or deficient statute language – to name only some. Furthermore, these issues have to be considered in the context of cases where the extent of disabilities is not always self-evident, the often multiple causes of disabilities are frequently obscure and/or medically or scientifically complex, and the connection of disabilities to the workplace is not always plain.

Third, as the final level of appeal in the compensation system, the Tribunal must make decisions that are inherently provocative. The statute has established a system that provides some disabled members of society with income replacement benefits, but denies them to others. It then makes private businesses responsible for funding the system. The controversial nature of the issues that arise from such a system, and their large impact on the parties involved, call upon the Tribunal for especially thorough explanations of its decisions.

Finally, the Tribunal's role requires its panels to write reasons in individual cases that will serve the purposes of more audiences than just the worker or employer parties in that case. Other groups to whom the decisions must be addressed include: the WCB's administrators and the WCB's board of directors; other Tribunal adjudicators considering future cases or who may be called upon to reconsider the decision in question; Tribunal professional staff; the system's stakeholders and their professional advisers; workers' compensation professional advocates and advisers; prospective parties and their representatives in future cases; the government, opposition parties and their expert advisers; the media; and, on occasion, the Courts.

To meet the needs of these audiences, the reasons must be comprehensive, technically sound, and persuasive. Furthermore, they must relate in compatible language to relevant professional literature in the medical, scientific and legal fields.

Given all of these circumstances, the hard truth is that simplicity is frequently not an option.

I am, of course, aware of some feeling within the employer and worker communities that it is only since the creation of the Appeals Tribunal in 1985 that the workers' compensation subject has become complicated. I do not, however, accept any cause-and-effect relationship. The complexity has always been there; the difference is that now it must be made public. The Tribunal is merely the designated messenger.

The Hearing Process

Another aspect of the Tribunal's performance which I should like to address particularly is the quality and appropriateness of the Tribunal's hearing process. Coopers and Lybrand had reported "an overwhelming perception" of the client communities that the Tribunal's process was "ponderous and overly legalistic" and that "panels do not have sufficient control over the decision process because of the role of staff".

In the 1990 Annual Report, I recorded our "particular surprise" at these criticisms of the adjudicative process. They seemed to be remarkably inconsistent with the generally positive feedback on the adjudicative processes that by 1989 my colleagues and I were commonly receiving from our usual contacts within the employer and worker communities. As reported in the 1990 Annual Report, in response to those criticisms the Tribunal Chair and Alternate Chair had embarked on a series of meetings with the major players in both the worker and employer communities throughout the Province to hear their views on the Coopers and Lybrand Report, and in particular on the Coopers and Lybrand criticism of the adjudicative process.

Those meetings were completed early in 1991 and confirmed to our satisfaction that indeed the criticism of the process was, as of that time at least, unwarranted.

I should mention that the role of staff in the pre-hearing identification of issues has been adjusted since 1989 so that substantial decisions affecting the conduct of a case are now almost always decided in the first instance by the hearing panel. (They had always been decided ultimately by the hearing panels but interim staff determinations made in anticipation of the hearing panels' wishes and in an effort to shorten the hearing process had been the source of client frustration). Thus, one of the Coopers and Lybrand criticisms was in the course of being corrected while its report was in progress.

I am satisfied that the Tribunal's hearing processes are fair and effective, and if the Coopers and Lybrand "legalistic" criticism is meant to refer to a preoccupation with rules for their own sake, I am also satisfied that that criticism is not justified. In a hearing process dealing with complex and contentious issues which are often of great significance to the parties, considerations of both fairness and efficiency as well as principles of law require some structure and predictability in the process. We have, accordingly, established such practice directions as we have found to be necessary for those purposes. Furthermore, each of our hearing panels will normally conduct its hearings in accordance with a common hearing structure that we have found to be fair and efficient. But from the Tribunal's inception we have been committed to the rejection of any preoccupation with rules for their own sake.

As with the quality of decisions, I base my opinion concerning the appropriateness of the Tribunal's procedures and process most importantly on my own professional judgment in such matters but that opinion is buttressed by a number of objective indicators: the information obtained through the 1990 meetings with stakeholders; the ongoing feedback received routinely from the employer and worker communities; the reaction of people newly appointed to Tribunal adjudicative positions with previous experience of the process of other tribunals; and the high level of satisfaction with the process of the Tribunal's own members. It is, in my view, especially significant that the worker and employer members who are representative of their communities' interests at the Tribunal, also indicate a high level of satisfaction with the Tribunal's processes.

Backlog

During the latter part of the reporting period, I was asked to respond to a questionnaire administered to all agencies pursuant to a Management Board review of agencies, boards and commissions. One of the questions was whether we had a backlog situation.

In the course of answering that question, I found it necessary to discuss my understanding of the concept of backlog, and I think both the answer and that discussion are important enough to be repeated here.

If the backlog question is whether there are cases piled up at the Tribunal's door which the Tribunal isn't getting to, the answer is no. We are able to deal with cases as they come in. But the question, of course, is not that simple.

In responding to an inquiry about backlogs it is important that the terminology be clear. If one conceives of the Tribunal's process as a pipeline, then a backlog is caused by unplanned or undesirable constrictions at various places in the pipeline. And if there are no constrictions of that nature, there is no backlog, even though the pipeline will be full of cases at various stages of completion. The number of cases that would be in the pipeline if there were no unplanned or undesirable constrictions is, in my terminology, the Tribunal's *workload*, and the number of cases that are there because of such constrictions is the Tribunal's *backlog*. The backlog and the workload together comprise the *inventory* of cases at the Tribunal.

The Tribunal's inventory of cases totalled 1,335 at the end of 1991. This contrasts with 1,541 at the end of 1990, 1,612 at the end of 1989 and 2,009 at the end of 1988. This steady reduction has been achieved in a period when the incoming caseload has been about the same each year.

Deciding whether cases are in the pipeline only because of unplanned or undesirable constrictions is a judgment call on a number of levels.

First, all processes have planned constrictions that are considered desirable or at least acceptable. These consist, on the one hand, of the process elements themselves as they have been selected and designed by the process designers and, on the other, of the reasonable limitations on the resources available to operate such elements.

Thus, the creation of an external appeals tribunal extended the time it takes to finally complete a workers' compensation case, and the nature of the resources made available to the tribunal determined ultimately the length of that extension. A WCAT example at a less macro level would be the pre-hearing review of the sufficiency of the medical evidence in the file. The time it takes to do that review extends the time it takes to complete the appeal, and the number of staff employed on the review determines the length of that extension.

Whether the reasons for the pre-hearing medical review justify adding *any* additional time to the appeal process and, if they do, how much time – and therefore what limitations on the resources applied to the review are warranted – are, like the question about the existence of the Tribunal, questions on which reasonable people may differ. Answers to these questions require personal judgments about what constitutes an adequate adjudication process and about how the needs of such a process can be most efficiently and effectively met, and about how much time it is reasonable or fair to devote to the process. Furthermore, they assume the availability of such funding as can be demonstrated to be required for the efficient operation of the elements of the process which have been judged to be necessary.

The various elements of the Tribunal's process are always under review and are subject to continual adjustments in response to the Tribunal's developing experience. For example, in 1992 we will experiment with the increased use of pre-hearing conferences in out-of-Toronto cases. But, at this point in time, the process elements and the resources we are applying to those elements reflect my colleagues' and my best judgment as to what is fundamentally necessary to perform the Tribunal's statutory assignment within an acceptable time frame.

There is also, then, the question of whether the agreed upon resources are being applied to the accepted elements as efficiently as possible. Could a particular element of the process be done faster by organizing and managing it better? Thus, is it necessary for the pre-hearing work to take, on average, 40 days, or with better organization could it be done in 30? Again, this is question of judgment.

For anyone who disagrees with these judgments, the number of cases in the pipeline which in their opinion wouldn't be there if there were a different process design (if we didn't, for example, do a pre-hearing review of medical evidence), or if there were a bigger budget, or if the system were organized and managed better, will be fairly regarded as backlog.

It currently takes a typical entitlement case about 7.5 months to make its way through the Tribunal's process from beginning to end. In 1985, when the Tribunal's process was first being planned, the goal of an average six-month turnaround time was regarded as reasonable. In 1988, the Tribunal Chair accepted the then Minister of Labour's request that the goal for the average turnaround time be reduced to four months. But here we are at the end of 1991 experiencing a typical turnaround time of 7.5 months.

Thus, if our own 1985 judgment were still considered sound, we would say that the Tribunal was currently running about 1.5 months behind our goal, or that we had a backlog of about 267 cases ($1.5/7.5$ of the inventory at the end of the reporting period). If the 1988 goal of four months is still considered a reasonable goal, our backlog is about 623 cases.

It is my own view that the Tribunal's process design has demonstrated its validity and there are no elements of the present design which are not necessary for the Tribunal to accomplish its role as that role is defined by the statute.

As far as the efficiency of the operation is concerned, I still think it may be possible to reduce the typical turnaround time perhaps to about seven months. We will know better after we have had the assistance of the new case tracking system for a few months.

However, barring a substantial budget increase, six months or four months can now both be seen, in my view, to be unrealistic goals. Indeed, given that almost four months is typically devoted to negotiating a hearing date with the parties and then waiting for the agreed hearing date, neither goal would be feasible, even with additional resources, without reverting to arbitrary hearing dates, an approach that has been proven not to be acceptable to the parties or their representatives.

If a seven-month typical turnaround time turns out to be reasonable, then, relative to that standard, we are currently running a backlog, overall, of about 89 cases.

One segment of the Tribunal's pipeline in which there is evidence of a backlog-creating constriction is decision writing. The overall achievement of writing decisions within 60 days on average is not, given the increasing complexity of our cases, significantly out of line, if at all. However, we continue to have a batch of especially old cases that take over 12 months to complete after they reach a ready-to-write status. The number of these is not large in the overall scheme of things (there are about 30 of these cases at any one time), and they are inevitably highly complicated and difficult cases which may be expected to take several months to complete in the best of circumstances. However, this batch of cases is larger than is necessary, and we are making every effort to bring the writing of these cases under better control.

One of the things about pipelines that it is very important to bear in mind in this era of increasingly restrained budgets is that reductions in available resources for operating a pipeline do not lengthen the pipeline; they can only be met either through more efficient operation or by shortening or narrowing the pipeline.

There is an intuitive tendency to think of the consequences of cutbacks in the funding of adjudication activities in terms only of added delays, to see them, in effect, as merely lengthening the pipeline, but this is an optimistic and wrong view. Once the potential for more efficient operation of existing process elements has been exhausted, and further shortening of the pipeline (the outright elimination of some of the process elements) has proven impracticable (or illegal), then the final effect of remaining resource cutbacks will be to narrow the pipeline and thus to altogether prevent the tribunal from performing some proportion of its statutory responsibilities.

If the resources available to a tribunal were reduced to the point that permitted the processing of only 75 cases a month when 100 were being received, a tribunal would be faced with a backlog that was always growing. In the short run, the true implications of such a cutback would be obscured by the fact that the change will be evidenced only by finite additional delays in individual cases as appellants waited for their cases to enter the pipeline (once in the pipeline, the process time would be the same). But the underlying reality would be that the tribunal is now equipped to process only 75 per cent of the cases arising under its statute.

To date, this Tribunal has not been faced with any such conundrum, and I mention it here only because of the general environment of "deep" budgetary restraint, and of the particular importance in such an environment of keeping the thinking clear.

INFORMATION TECHNOLOGY

As 1990 drew to a close, the Systems Department, in conjunction with the Tribunal's Chief Information Officer, completed a plan for a major enhancement of the Tribunal's information technology. This included a business case that was submitted to Management Board of Cabinet in February 1991. The major emphasis of this document was the need to correct a serious overload situation that existed as a result of an increasing dependence on the use of automation in the processing of appeals. The existing five-year-old computer system had assumed an indispensable role in the daily production of all documents relating to the approximately 1,200 decisions the Tribunal issues annually. It was also used extensively for internal and external documents and correspondence. This overload situation had led to unsatisfactory response times, and stood in the way of the development of new end-user applications. Concern over the anticipated effects of Bill 162, which is expected to significantly increase the Tribunal's case load, made the need to upgrade even greater.

Management Board of Cabinet approved the business case and a tender was released in May. A contract was reached a short time later. The installation of a significantly enhanced computer system followed, and its testing and evaluation are expected to continue into the early part of 1992. The new system was selected for its ability to support current computer applications as well as the development of new ones. Case Tracking is the first new project to be undertaken.

The past five years have seen a substantial decrease in cost and corresponding increase in speed and capacity of computer equipment. This trend was an added incentive to upgrade, enabling the Tribunal to implement a cost-effective, case tracking system – the original ideas for which had to be shelved in the past due, in important measure, to inadequate computer resources. As of the end of the reporting period, the new case tracking system is in the final stages of software development and testing. Its aim is to provide more up-to-date statistical information about cases and case load, with faster and easier access to this information. Implementation is scheduled to commence in February 1992, beginning with the Records and Intake departments, and will continue with other departments as the year progresses.

ADVISORY GROUP

In the summer of 1985 when the Tribunal was in the planning stages, I had organized an *ad hoc* group of interested parties which we called the Advisory Group and which served as a convenient forum for constituency feedback on our plans, particularly our plans for the hearing process.

That group was very successful, in my view, in ensuring that what we did in the development of the Tribunal we did with a full understanding of the constituencies' concerns and that where we did things that did not meet with the constituencies' approval there had at least been full opportunity for input from them and for explanation from us as to the reasons for not accepting the constituencies' views. A description of the Advisory Group and its role appeared in the Tribunal's First Report.

As the Tribunal emerged from its developmental phase the need for such a group was not felt as strongly by me or the Tribunal and this, coupled with the unmanageable size to which the Group had grown, led to the concept falling into disuse. The last meeting of the Group in its original form took place in the spring of 1988. Thirty-four people attended that meeting, not counting Appeals Tribunal members and staff.

One of the themes in the Coopers and Lybrand Report was a concern about the Tribunal's accountability to its client communities, and the report recommended a renewed commitment to the idea of an Advisory Group. This recommendation coincided with a growing interest within the communities, and at the Tribunal as well, for a forum for routine consultation on process and administrative issues and led in the spring of 1991 to the establishment of a steering committee for the development of a new Advisory Group. The Steering Committee met on March 6, 1991. The new Advisory Group, consisting of five representatives from worker and employer organizations respectively and senior representation from the Tribunal's members and staff, met for the first time on September 11, 1991. It has been agreed that it will meet regularly, probably on a bimonthly basis. The Group's "Charter" may be seen in the following extract from my memorandum to the Group dated April 12, 1991:

The Tribunal's Commitment

The Tribunal is interested in participating fully in the Advisory Group and, on behalf of the Tribunal, the Tribunal Chair makes the following commitments:

1. The Tribunal will participate in regular meetings of the Advisory Group held at regular intervals, as decided by the external members of the Group.
2. The Tribunal representation in the Group will continue to include the Tribunal Chair and Alternate Chair as well as experienced worker and employer members of the Tribunal.
3. The Tribunal will provide to the Group information about the Tribunal and its operations as requested by the external members, provided that obtaining such information is practicable and not inconsistent with any confidentiality requirements or other obligations.
4. The Tribunal will also provide the Group with an opportunity for input on any changes of strategic significance which the Tribunal is proposing in its administrative, practice or procedure policies.
5. The Tribunal undertakes to give careful consideration to criticisms or proposals emanating from the external members of the Group, and to report to the Group its decisions in such criticisms or proposals.

ALTERNATE CHAIR

The Alternate Chair position at this Tribunal has always been a major element in the Tribunal's organizational structure and coming into 1991 the Tribunal had had the benefit of two very strong and capable incumbents: Jim Thomas from the Tribunal's inception in 1985 to April 1988, when he accepted appointment to an Assistant Deputy Minister position at the Human Resources Secretariat and his successor Laura Bradbury.

In July 1991, the office became vacant a third time when Ms. Bradbury accepted appointment as the Chair of the Social Assistance Review Board, and it is with great pleasure that I now record in this Report that I was able to persuade Maureen Kenny to take on the responsibilities of that office in Ms. Bradbury's place. Her tenure in the position commenced September 1, 1991.

Maureen Kenny joined the Tribunal originally in 1985 as Counsel to the Chair and in that position she played an extremely important role in the development of the Tribunal's early jurisprudence. She left that position in July 1987, when she accepted an appointment as one of the Tribunal's vice-chairs, a role that she, of course, continues in her new position as Alternate Chair.

TRIBUNAL ALUMNI

In addition to Laura Bradbury's appointment as Chair of the Social Assistance Review Board, 1991 saw the Tribunal honoured by two other senior appointments for its members. Sandra Chapnik, a part-time Tribunal Vice-Chair, was appointed a justice of the Ontario Court, General Division, and Nicolette Carlan, a full-time Vice-Chair, was appointed chair of the Industrial Disease Standards Panel.

HIGHLIGHTS OF THE 1991 CASE ISSUES

This section of my Report continues the tradition of highlighting legal, factual, medical and other interesting issues addressed by the Tribunal during the reporting period. Unfortunately, it is never possible to do more than note a few areas which I found to be of particular interest. The issues are presented in no particular order of importance.

Re-employment Under Bill 162 Amendments

This reporting period saw the release of the first Tribunal decisions on the re-employment provisions introduced to the *Workers' Compensation Act* in 1989 by Bill 162. Tribunal decisions have had to address a number of procedural and legal issues arising from the new provisions and the re-employment procedures developed by the Board.

The decisions have identified the difficulties in handling re-employment claims expeditiously, which is generally necessary for early rehabilitation, and the need for the Board to obtain sufficient information to decide the worker's level of fitness. *Decision No. 968/90* (1991), 17 W.C.A.T.R. 334, recognized that the Board will need to make determinations quickly and that the worker's needs or abilities may not be fully known or may change over time. This decision indicated that the Board could act on the information available to it at the time, and could make further determinations and give new notices to the employer as the situation changed. *Decision No. 968/90* also considered the employer's duty to accommodate the workplace when the worker could perform the essential duties of his pre-injury job.

Decision No. 372/91 (1991), 19 W.C.A.T.R. 317, appeared to approach the requirement of notice more strictly and identified a number of factors which should be addressed by the Board before sending a notice of fitness to the employer. While *Decision No. 372/91* found that an employer must comply with a notice of fitness and appeal any disagreements, the decision also held that an employer's obligation to re-employ did not arise until it received a valid notice of fitness.

After *Decision No. 372/91* was released, the Board provided submissions to the Tribunal on its interpretation of the re-employment provisions, and the administrative impact of an interpretation which would require the Board to determine the worker's level of fitness and issue a notice to the employer before the obligation to re-employ could arise. These submissions were referred to a number of Panels considering re-employment cases. *Decision No. 605/91* (1991), 21 W.C.A.T.R. 131, was the only decision to issue during 1991 which considered these submissions.

Decision No. 605/91 agreed with *Decision No. 372/91* that the wording of the Act required the Board to give notice to an employer before the obligation to re-employ could arise. Other Tribunal decisions on this point should issue during 1992.

Decision No. 605/91 is also interesting for its consideration of what must be proved to rebut the presumption contained in the re-employment provisions, and of the standard of proof that the rebuttal must meet.

Occupational Stress

Occupational stress remains an issue of interest to the public. As mentioned in the last Report, the Board is in the process of developing a policy on chronic occupational stress. Meanwhile, the Tribunal continues to adjudicate stress appeals on a case-by-case basis.

Early Tribunal cases which suggested that a special two-step inquiry was necessary because of the evidentiary difficulties in stress cases have not been followed. It now appears to be accepted that the usual test applies: has it been established on a balance of probabilities that the workplace was a significant contributing factor to the disability?

In deciding whether this test has been met, Tribunal panels carefully weigh employment stressors with personal stressors. A stress disability will not be compensated where the work problems are insignificant when compared to the worker's personal problems. See *Decision No. 312/90* (April 15, 1991). It is not enough to say that the workplace contributed to the stress. There must be an identifiable injuring process which is associated with the workplace. *Decision No. 520/90* (1991), 19 W.C.A.T.R. 147.

As noted in the last Report, *Decision No. 322/89I* (1990), 18 W.C.A.T.R. 93 at p. 102, asked for submissions on whether personnel actions could be considered compensable "accidents". *Decision No. 322/89* (1991), 18 W.C.A.T.R. 93, issued during this period. The majority found that a demotion which was negotiated between the employer and the union was not a compensable "accident". However, there was a dissent which found that the worker had been disabled over a period of time by the demotion and was entitled to compensation.

The Tribunal has granted entitlement in cases where a worker suffered an acute onset of stress. In *Decision No. 952/89* (January 23, 1991) the worker experienced an acute anxiety reaction following disciplinary action at work. In *Decision No. 99/91* (1991), 18 W.C.A.T.R. 293, a police officer was entitled to compensation for a post-traumatic stress disorder which he suffered following a shooting incident. In *Decision No. 1030/89* (1991), 20 W.C.A.T.R. 46, another police officer was found to be entitled to benefits on an aggravation basis where he experienced chronic workplace stress and was also involved in several stressful criminal investigations.

Occupational Disease

Occupational disease cases involve workplace exposure to harmful processes or substances. These cases continued to raise some of the most challenging adjudicative issues. The Tribunal's general approach remains the same. Disabilities are compensable if they are covered by the statutory definition of "industrial disease" and related provisions, or by the "disablement" branch of the definition of "accident".

The Tribunal is often called on to assess complex epidemiological evidence. However, cases where there is little or no epidemiological evidence may be even more challenging. The Tribunal is required by statute to decide on the "real merits and justice" of a claim. Tribunal panels must weigh all of the available evidence, including the medical evidence and opinions relating to the particular worker, the job conditions, any non-employment exposures, and any general studies or epidemiological evidence on similar conditions. See, for example, *Decision No. 773/88* (1991), 19 W.C.A.T.R. 39, (which dealt with pharyngeal cancer in a nickel worker), *Decision No. 331/89* (March 26, 1991) (where the worker had lung cancer and was exposed to a "veritable soup" of carcinogens) and *Decision No. 645/91* (October 1, 1991) (which involved sarcoidosis).

There have also been a few occupational disease cases where the worker had either developed a condition which was a precursor to an industrial disease or had become sensitized to particular agents due to workplace exposure, and had to be removed from exposure. See *Decision No. 157/91* (1991), 20 W.C.A.T.R. 228, and *Decision No. 331/91* (June 4, 1991).

Tinnitus and hearing loss claims are generally treated as occupational diseases. *Decision No. 872/89* (1991), 21 W.C.A.T.R. 10, found that a tinnitus condition could be caused by industrial noise in the absence of a compensable level of hearing loss. *Decision No. 181/89* (1991), 19 W.C.A.T.R. 93, analyzed the basis for assessing the effects of impact noise, continuous noise and combined impact and continuous noise. *Decision No. 132/90* (1991), 17 W.C.A.T.R. 99, confirmed the Board's policy of applying a presbycusis factor to hearing loss claims by older workers. The presbycusis factor reflected the existence of a separate, non-compensable injuring process in older workers.

Chronic Pain and Fibromyalgia

Appendix C to the Third Report reviewed the development of the Tribunal's and Board's treatment of chronic pain and fibromyalgia in some detail. The 1990 Annual Report summarized the WCB board of directors section 86n review of *Decision Nos. 915, 915A*, etc., which issued on June 1, 1990 (reproduced in 15 W.C.A.T.R. at p. 245). The section 86n review showed a large measure of agreement between the two institutions. The board of directors concluded there was no need to direct the Tribunal to reconsider *Decision Nos. 915* and *915A*. However, a number of Tribunal decisions included in the section 86n review had awarded temporary benefits for chronic pain prior to March 27, 1986, the date *Decision No. 915A* found should be the starting point for chronic pain benefits. At the close of the last reporting period, the board of directors was considering submissions on whether the Board should exercise its discretion to direct the Tribunal to reconsider these cases. On January 18, 1991, the board of directors issued individual decisions in these cases. By majority vote, the board of directors directed the Tribunal to reconsider. An example of one of these section 86n decisions is found at 18 W.C.A.T.R. 339.

The Tribunal commenced processing these reconsiderations. However, the board of directors subsequently received a request to reconsider its section 86n direction. After consulting with the parties to the Tribunal proceedings, the Tribunal suspended its reconsideration procedures.

The Tribunal Chair was formally advised on November 27, 1991, that the board of directors had considered the request to reconsider at its November 8, 1991, meeting and declined to reconsider. At the close of the reporting period, the Tribunal was in the process of contacting the parties and rescheduling pre-hearing conferences in these cases.

Turning to the Tribunal's chronic pain decisions issued during 1991, panels continue to apply the "whole person" approach to assessments. In some cases, Panels have "double checked" a non-organic chronic pain pension by comparing it to the likely pension award for an organic disability of the same nature. See *Decision No. 23/89* (1991), 18 W.C.A.T.R. 61. While the "whole person" approach accords with the Board's policy against stacking non-organic benefits on organic benefits, it has been noted that the no stacking policy is intended to prevent compensating a worker twice for the same disability. If there are two disabilities, both must be compensated. See *Decision No. 409/91* (1991), 19 W.C.A.T.R. 334.

Panels have also examined a number of issues arising from the Board's new Psychotraumatic and Behavioural Disorders Rating Schedule which applies to chronic pain and fibromyalgia. See, for example, *Decision No. 738/90* (1991), 18 W.C.A.T.R. 246.

Decision No. 912/90 (1991), 17 W.C.A.T.R. 310, discussed the difficulties in determining maximum medical rehabilitation in a chronic pain case, especially when the disability arose before 1986, when the condition was not well understood and rehabilitation services were not as available.

Transfer of Costs Between Employers

In cases involving negligence and more than one employer, the Act enables the Board to transfer all or part of the costs of an accident to a different class or group of employers where the Board is satisfied that the negligence of a Schedule 1 employer other than the injured worker's employer has contributed to the injury.

The 1990 Report noted a change in the Tribunal's treatment of cost transfers. Early Tribunal cases found that a cost transfer was only available if there was "clear evidence" of negligence. The 1991 cases confirm the 1990 trend that the Act does not require such a high standard of negligence. *Decision No. 111/91* (April 17, 1991) found that the concept of negligence should be given the same interpretation as at common law. *Decision No. 188/90* (July 3, 1991) found that in an occupier's liability case, the test for negligence should be based on the *Occupiers' Liability Act*, which was similar to the usual common law test for negligence. *Decision No. 301/91* (June 6, 1991) proposed a somewhat different test based on a standard of reasonable care "under the circumstances of the cost transfer". The Panel considered (1) what was a reasonable standard of care in the circumstances of the work-related disability, (2) whether the standard was breached by another Schedule 1 employer or its workers and (3) if so, did the breach make a significant contribution to the accident.

Classification of Employers

A number of decisions issued in 1991 dealt with employer classifications. The exemption for organizations not operated as a business or trade or for profit or gain was considered in the context of a residential condominium corporation (*Decision No. 991/88* (1991), 19 W.C.A.T.R. 68), and a meals-on-wheels operation (*Decision No. 352/91* (1991), 19 W.C.A.T.R. 308). The Tribunal also considered the Board's policy on subcontractors (*Decision No. 338/91* (November 11, 1991)), the policy of classifying employers based on end product, when more than one product is produced and the end product is not named in the rate groups (*Decision No. 927/90* (June 19, 1991)) and the exception to the general requirement that an employer should be assessed as a single unit (*Decision No. 806/89* (1991), 19 W.C.A.T.R. 116).

Miscellaneous

The Appeals Tribunal is created as a tripartite appellate body with investigative powers. A number of decisions dealt with the Tribunal's unique powers and role under the *Workers' Compensation Act*. *Decision No. 909/90* (1991), 20 W.C.A.T.R. 168, considered the parameters of the Tribunal's investigative powers and its mandate to determine on the "real merits and justice". *Decision No. 657/91* (1991), 20 W.C.A.T.R. 293, discussed the role of the Tribunal's medical assessors who are appointed under the Act. *Decision No. 764/91* (1991), 21 W.C.A.T.R. 348, considered the precedential value of previous Tribunal decisions and when a Panel should defer to a general Tribunal position. *Decision No. 136/90* (1991), 19 W.C.A.T.R. 134, and *Decision No. 816/90* (August 22, 1991), examined the effect of the *Freedom of Information and Protection of Privacy Act, 1987*, on confidentiality and access provisions in the *Workers' Compensation Act*. *Decision No. 190/89* (December 2, 1991) and *Decision No. 99/91A* (1991), 21 W.C.A.T.R. 79, considered whether the Tribunal had the power to award costs.

Other interesting legal and medical issues to come before the Tribunal included the compensability of impotence (*Decision No. 785/88R* (1992), 21 W.C.A.T.R. 1), the standard of proof to be applied in determining whether a worker has committed suicide (*Decision No. 32/91* (1991), 18 W.C.A.T.R. 258) and the compensability of heart attacks (for example, *Decision Nos. 344/89* (1991), 20 W.C.A.T.R. 26, *433/91* (October 31, 1991) and *191/91* (August 20, 1991)).

JUDICIAL REVIEW ACTIVITY

In 1991, three applications for judicial review of Tribunal decisions were heard by the Divisional Court.

The decisions subject to the applications were:

- 1) *Decision No. 799/87* dated September 3, 1987, and heard March 5, 1991,
- 2) *Decision No. 298/88* (1988), 9 W.C.A.T.R. 281, heard February 14, 1991,
- 3) *Decision No. 656/88* dated December 9, 1988, and heard November 8, 1991.

All three applications for judicial review were dismissed.

A motion for leave to appeal was brought to the Court of Appeal from the decision of the Divisional Court, on November 29, 1990, dismissing applications for judicial review in the following seven decisions: *Decision No. 850/87* dated February 11, 1988, *Decision No. 850/87R* (1990), 14 W.C.A.T.R. 1, dated March 23, 1990, *Decision No. 981/87* dated June 3, 1988, *Decision No. 981/87R* dated March 23, 1990, and *Decision Nos. 695/88, 696/88* (1989), 10 W.C.A.T.R. 308, and *697/88*, all dated March 9, 1989.

The application for leave was heard on June 24, 1991, and dismissed.

An earlier motion for leave to appeal of *Decision No. 525* dated March 19, 1987, was dismissed by the Court of Appeal, on February 21, 1991, for delay.

A further motion for leave to appeal to the Court of Appeal has been filed with respect to the Divisional Court's decision on the application for judicial review of *Decision No. 656/88*.

At the end of 1991 there were six applications for judicial review outstanding. These are applications for review of:

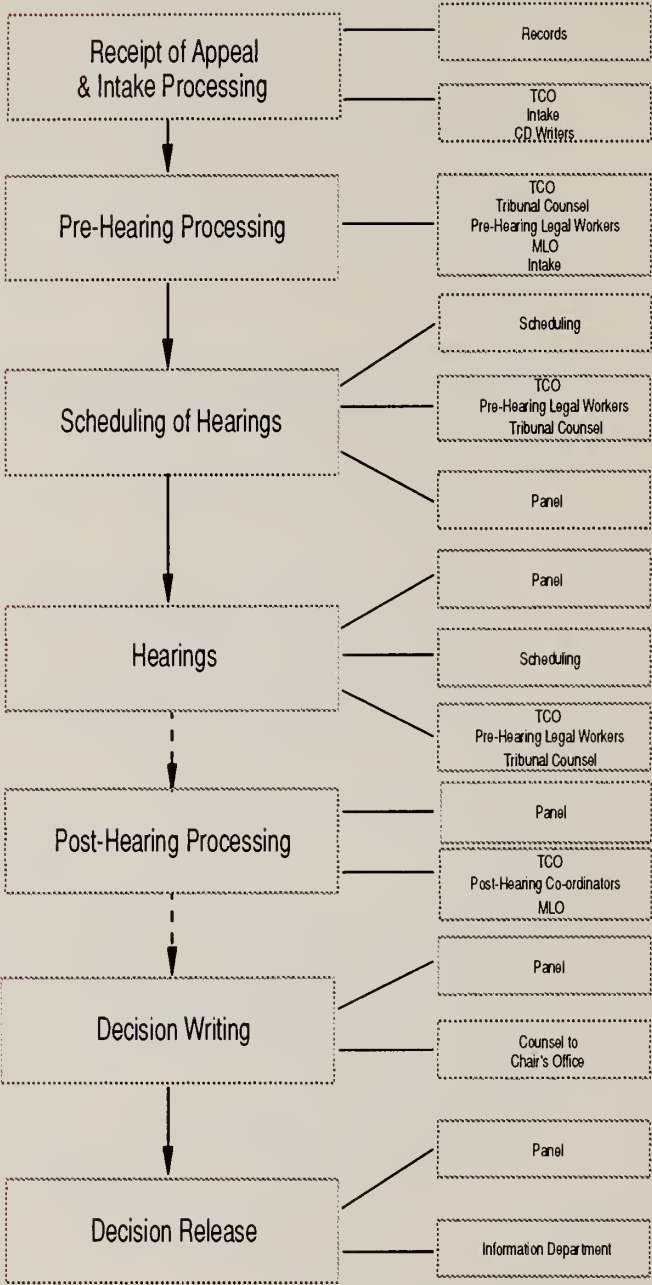
Decision No. 801/88 dated November 23, 1988,
Decision No. 917/88 dated August 11, 1989,
Decision No. 977/89 (1990), 13 W.C.A.T.R. 298,
Decision No. 155/90 dated March 12, 1990,
Decision No. 497/90 dated September 27, 1990, and
Decision No. 32/91 (1991), 18 W.C.A.T.R. 288.

Other Matters

On May 7, 1991, the Tribunal attended at an application to the Ontario Court (General Division) to restrain the Tribunal from proceeding with hearing a worker's claim for work related stress. The worker had entered into an agreement with her employer waiving rights. Counsel for the worker brought a motion to quash the application based on sections 16, 17, 75 and 86g(1) of the Act. The Tribunal, defending its jurisdiction, supported the motion to quash.

The Court held that these sections provide the Workers' Compensation Appeals Tribunal with the exclusive jurisdiction to deal with all problems raised in the notice of application, and quashed the application.

THE APPEAL PROCESS



Special and Administrative Services

- Systems Department
- Finance and Administration
- French Translation Services
- Information Department (Library and Publications)
- Human Resources
- Reproduction and Mail Room
- Secretarial Services
- Statistical Service (Data Processing and Reports)
- Word Processing Centre

THE TRIBUNAL REPORT

THE APPEAL PROCESS

The appeal process used by the Tribunal has been represented graphically as a flow chart on the facing page. The process from receipt to final disposition of a typical appeal is as follows.

Appeals are logged in by Records and forwarded to Intake, the department responsible for obtaining the worker's file from the WCB and other necessary preliminary information. Once Intake's work is complete, it forwards the file to the Tribunal Counsel Office where the case is prepared for hearing. The main vehicle in this regard is the Case Description ("CD") which summarizes the salient facts, identifies the probable issues, and provides an indexed copy of all relevant documents from the WCB file. Upon completion, the CD is forwarded to the WCB and to the worker and employer, or their representatives, who are free to request deletions, additions or amendments.

(The worker's consent to the employer having access to documents in his or her file is sought at the initial stages of an appeal. If the consent is withheld, the processing of the appeal is put on hold while the issue of the employer's right of access to relevant documents is decided by a Tribunal Panel. This is done in a special panel process.)

At the same time, the CD is sent to the Tribunal's Medical Liaison Office (MLO), to the Tribunal counsel assigned to assist with the case, and to the Scheduling Department. In the Scheduling Department, discussions concerning a hearing date are initiated immediately with the parties' representatives with a view to agreeing on a hearing date. The MLO identifies medical issues in the case and checks the medical evidence available in the file and consults where necessary with the Tribunal's Medical Counsellors as to significant omissions or deficiencies. Problems with the medical evidence are addressed by further investigating, perhaps through seeking further information or clarification from doctors whose reports are to be found in the WCB file or by seeking additional advice or opinions from doctors on the Tribunal's roster of Order-in-Council appointed medical assessors. If this activity cannot be completed before the hearing date, the problem is brought to the attention of the Hearing Panel at the hearing and the Panel may direct post-hearing completion of such further investigation.

A hearing panel may, in any event, in the course of the hearing and decision-making process, identify for itself a need for further medical or other investigation. Where that happens, it will instruct the Tribunal Counsel Office to coordinate and direct that investigation, post-hearing.

The results of any Tribunal investigations, whether post-hearing or pre-hearing, are shared with the parties, who are entitled to make submissions in respect of them or, indeed, to respond with further evidence of their own.

It is usual for panels to rely on written medical reports as sufficient indication of a doctor's evidence. However, where a report requires clarification or explanation, the report's author may be required to testify and be questioned about the report.

The Tribunal counsel investigates the law relating to an appeal and, where necessary, provides the Hearing Panel, and the parties, with copies of especially significant previous decisions of the Tribunal or of other authorities. He or she also assists with any need for further clarification of the issues likely to be addressed by a hearing panel and provides information to both parties' representatives concerning the probable issue-agenda and the Tribunal's hearing process.

The CD, any additions to the CD requested by the parties, and any product of the pre-hearing work of the MLO or the Tribunal counsel is delivered to each member of the tripartite hearing panel a few days before the hearing date and is read by them in advance of the hearing.

At the hearing, any participating party is entitled to submit such further documentary evidence as he or she considers necessary and to have any witnesses testify. This is subject to the obligation to give the other party and the Tribunal three weeks advance notice of such evidence. Witnesses may be cross-questioned by the other party and by any member of the hearing panel. It is usual for at least the worker to testify.

Once all the evidence has been presented, submissions on the evidence and law are made and the hearing is then considered complete. The hearing is, however, always subject to being reconvened on the initiative of the hearing panel if the panel concludes that additional evidence or further submissions are needed.

After the hearing, the decision is made through a process involving panel caucuses, drafting reasons, reviewing draft reasons, re-drafting, further caucuses, etc. The drafting of reasons is the responsibility of the panel chair but all three members of the hearing panel participate fully in the decision-making process. Frequently, draft decisions will be submitted to the Tribunal's draft review process prior to the decision being finalized.

After the decision is released, the Tribunal may receive a request for reconsideration, or be asked to respond to a complaint to the Ombudsman's Office, or the decision may become the subject of judicial review.

VICE-CHAIRS, MEMBERS AND STAFF

Lists of the Vice-Chairs and Members, senior staff and Medical Counsellors active during the reporting period, as well as a record of roster changes and résumés for newly appointed Vice-Chairs and Members can be found in Appendix A.

TRIBUNAL COUNSEL OFFICE

The Tribunal Counsel Office (TCO) consists of six groups, each reporting to the General Counsel.

Intake

The Intake Department handles all incoming appeal applications and the public's questions about appeals and about the appeal process. The Intake Department has been primarily responsible for all the Tribunal's "special section" cases. The special section cases include section 77 access to worker file cases, section 21 employer requests for medical examination, and section 15 cases on the right to maintain civil actions for damages.

However the Intake Department is not responsible for re-employment issues under section 54b of the Act. These special section cases are handled by a senior TCO lawyer.

The legal aspects of Intake work are carried out under the review of TCO lawyers. Special section cases constitute approximately 35 per cent of the Tribunal's incoming cases and often involve complex legal issues.

The Intake Department is headed by the Intake Manager.

Case Description Writers

Case Description Writers are responsible for preparing all cases for hearing according to a standardized model and within certain time limits.

The Case Description group works under the supervision of a senior TCO lawyer.

Noteworthy in 1991 was the fact that the Case Description group eliminated an earlier backlog and was able to keep up with the incoming volume of work without development of any further backlog. As a result, case descriptions were sent to parties in 1991 within a month or six weeks of the file being ready for preparation of the case description, unless specific difficulties were encountered with the appeal or with the receipt of file material from the Board,

Pre-hearing Legal Workers

When the case description is complete, the case is scheduled and transferred either to a legal worker or to a lawyer. Approximately 90 per cent of cases are handled by legal workers. These legal workers deal with matters that arise pre-hearing and may provide assistance to the parties if there are questions respecting the preparation of the cases.

This year was the first full year of operation for TCO's expanded group of pre-hearing legal workers. The group now includes three senior legal workers and two pre-hearing legal workers, and is headed by a manager of the pre-hearing group. The group has increasingly taken on more complex functions.

Lawyers

Lawyers handle a small number of the most complex cases, involving novel legal issues or issues which have been identified as involving a significant Tribunal interest.

At the request of the hearing panel, lawyers may attend hearings to cross-question witnesses or may provide the Panel with evidence, usually in the form of expert evidence from one of the Tribunal's medical assessors. The purpose of these functions is to ensure that there is an adequate record before the Panel. Lawyers may also make submissions on matters of law either by way of written submissions or orally at the hearing, at the request of the hearing panel. However, TCO lawyers do not make submissions on issues of fact and all submissions are presented in as neutral a manner as possible.

Lawyers also provide assistance to legal workers and supervise many of the functions carried out by legal workers. In 1991 there were five lawyers in TCO, exclusive of the General Counsel, as well as one articling student. Major issues which required lawyer input included the questions of legislative interpretation in re-employment appeals and issues related to stress claims.

TCO lawyers also handle applications for judicial review.

Medical Liaison Office

The Medical Liaison Office co-ordinates and oversees all of the Tribunal's interactions with the medical community and facilitates the Tribunal's use and understanding of medical evidence.

Pre-hearing

In 1991, 41.7 per cent of the total number of pension and entitlement case descriptions were referred to the Tribunal's Senior Medical Counsellors for assessment of the nature of the medical issues and the possible need for further medical evidence.

Additional medical information was put before the Panel in 80 per cent of these cases: in 30 per cent, general information was provided; in another 30 per cent, gaps were filled or clarification obtained; and in 20 per cent, problems with the sufficiency or quality of evidence were identified. In the latter 20 per cent of cases, either more evidence was provided via Medical Assessor reports, or the identification of potential problems was communicated to the Panels for their consideration.

Post-hearing

Of the total 192 post-hearing medical evidence requests by hearing panels received in TCO this year, 59.4 per cent of these were referred to the MLO to obtain independent expert evidence.

Medical Counsellors

Counsellors continue to review case materials referred by the MLO in order to determine if

- 1) there are gaps in the medical reporting;
- 2) clarification from treating physicians is required;
- 3) general medical information would assist in understanding the medical condition in the appeal;
- 4) additional medical information from an appropriate specialist(s) may be of assistance to the Panel.

Counsellors continue to monitor the sufficiency and quality of the Tribunal's Medical Assessor roster and recruit as needed qualified experts for the Tribunal's section 86h roster of medical assessors.

Medical Counsellors conduct annual medical audits of decisions to determine whether from a medical professional's perspective, there are problems with the manner in which medical fact or theory is treated or recorded in Tribunal decisions. Generic issues are identified which permit the Tribunal to evaluate its processes and practices as they relate to medical issues and medical evidence and to address any problems through medical education initiatives, several of which occurred this year.

No changes to the Medical Counsellor roster occurred this year.

Section 86h Medical Assessors

Assessors are highly acknowledged leaders in their specialty and may be asked to assist the Tribunal in a number of ways. Usually, they will be asked to review the appeal documentation, perhaps examine the worker and prepare a report in response to specific questions. Frequently, Assessors are asked to provide general information about the nature of a particular medical condition and the known medical theories concerning diagnosis, causation, pathology, treatment, prognosis and terminology. Assessors may be asked to recommend references, texts and journals or prepare medical treatises to assist the Tribunal's lay panels.

Generally, Assessors provide evidence by way of written reports. However, where a Panel determines it to be necessary, Medical Assessors may be asked to testify at the hearing as the Tribunal's expert witness.

All substantive medical reports and literature reviews conducted by Medical Assessors continue to be placed in the Tribunal Library for research purposes.

Medical Assessors are appointed for three year terms by the Provincial Cabinet. In 1991, a large percentage of Assessors required reappointment. Of the total, 21 were not re-appointed either because they retired from practice, moved out of the province or declined reappointment. Counsellors recruited and filled any vacancies that would have left the Tribunal's resources compromised.

Post-hearing Legal Workers

When the panel identifies that additional information is required after hearing, a request is made to the post-hearing legal workers, who coordinate this continuing investigation. The post-hearing legal workers report directly to General Counsel through a group leader.

INFORMATION DEPARTMENT

Publications

The Publications Department continues to refine and add to the Tribunal's roster of publications.

Practice Directions

The Tribunal reviewed its *Practice Directions* in 1991 and some important amendments resulted. The revised Practice Directions were made available to the public in a loose-leaf format. This format will make future amendments, which may apply only to individual practice directions, easier to distribute.

Cases Considered

Summaries of Tribunal decisions include a list of other decisions considered in the summarized decision. These other decisions may be WCAT decisions, court decisions or decisions of other administrative tribunals. In 1991, we began adding a reference indicating the way that these other decisions were treated in the summarized decision (for example, whether applied, distinguished or merely referred to).

Decision Digest Service (DDS)

Additions were made to the index material found in the *Cumulative Binder* of the DDS. They relate to decisions released before the DDS began. It is now possible to search all of the Tribunal's decisions by keyword or by section of the Act, using only the *Cumulative Binder* and the latest volume binder of the DDS.

The *Annotated Statute (December 1985 – December 1989)* consolidates all the prior volumes of the *Annotated Statute* into one document. It was edited to match the format and the selection criteria used in the more current releases of the *Annotated Statute*.

The *Keyword Index, Volume 1* covers decisions released from December 1985 to March 22, 1988, when a different keywording system was in place.

When a new keyword term is used for the first time, it is added to the *Keyword Guide Supplement*. This alerts users to search the new terms also. The *Keyword Guide Supplement* is now a regular feature of the DDS and is updated every three months.

W.C.A.T. Reporter

A consolidated keyword index appears in the Reporter at five-volume intervals. Until 1991, the keyword index for each volume issued after the last consolidated index had to be searched separately. The Reporter's *Interim Cumulative Keyword Index* now allows the intervening volumes to be searched in one document.

Concordance

The coming into force of the R.S.O. 1990 version of the *Workers' Compensation Act* resulted in a virtually complete renumbering of the R.S.O. 1980 version. To ease the transition to use of the new numbering, we prepared a *Concordance* that allows users to find the new section number by looking up the old number.

Leaflet

The Tribunal has relied on the publication, *A Straightforward Guide to the Workers' Compensation Appeals Tribunal*, to make itself known to the public. This relatively long pamphlet explains the Tribunal's role and procedures in some detail. It is also fairly expensive to produce. We have concluded that a shorter and simpler leaflet would provide a better introduction of the Tribunal to the public. It would also be more cost-effective. We therefore plan to publish such a leaflet. The *Straightforward Guide* will continue to be provided to those who require its greater detail.

Depository Libraries

We investigated the operation of the Ontario Government Depository Libraries programme and decided to participate in 1992. We will supply the *Reporter* and *DDS* to full depository libraries in the programme, free of charge. As these libraries are spread throughout Ontario, free access to our most important research publications will become easier, especially for those who cannot take advantage of the Tribunal's Library.

Library Highlights

Current Awareness

Current Awareness continues to be a very popular service. It provides OICs and staff with a comprehensive package of information regarding additions to the library's holdings. Sixty-seven people now see it on a weekly basis.

During 1991 two new chapters were added. "From the Legislature" includes information regarding new bills, and transcripts of Committee hearings; "Computers" contains the contents pages from all the computer related periodicals we receive.

Automation

The possibility of creating a database for the book collection was explored. Such a file would provide automated access to the collection and make the library less dependent on external resources by allowing for in-house creation and editing of records and production of the book catalogue.

Subject authority lists were transferred from Wordperfect files into Cardbox-Plus databases. This allows for quicker and more accurate assignment of subject headings to materials being indexed in the Library File and makes it simpler to revise and print copies of the authority lists.

Acquisitions

During the year the following items were added to the library: 280 books and government documents, 189 entries added to the file of judicial cases (Juris), 1,835 periodical articles and other documents indexed in the Library file.

Interlibrary Loan

A total of 724 items were obtained on interlibrary loan.

Serials File

The computer file used for recording serials was improved to allow for billing and claims information to be recorded in a standardized format.

Sixteen new titles were added to our holdings to bring the total number received to 225.

Our holdings were reported to two union lists, Ontario Government Libraries and Toronto Association of Law Librarians.

Reference

A second full time librarian commenced duties in early 1991. This enabled us to improve our reference service by having a staff member at the reference desk at all times. We continue to provide service to a wide range of external users. For example, students studying workers' compensation law, from George Brown College in Toronto, were regular users of the libraries services.

SYSTEMS DEPARTMENT

To provide adequate and efficient computer resources, Systems undertook the replacement of the Tribunal's over-burdened computer system with new equipment capable of meeting the organization's needs for the next four years. To accomplish this, the department obtained approval of a business case submitted to Management Board of Cabinet, wrote and released a public tender for the new equipment and, after awarding a contract, oversaw its installation and configuration.

Before its arrival, necessary upgrading of the Tribunal's current software took place. This involved the testing and evaluation of software. Upgrading had not been done in some time due to customization of the old software. All unnecessary customization was removed, making it easier to upgrade the software which would eventually run on the new computer system. The result is that future modifications will be done in a more timely fashion, giving users access to the performance enhancements of newer software releases.

When installed and configured, Systems transferred over the organization's applications from the old equipment to the new in December, and users began using the new computer for the first time. Acceptance testing began in the new year.

To take advantage of better and less expensive computer applications, the interconnection of Personal Computers to the Tribunal Local Area Network was carried out. This development allows for the tailoring of software applications to the individual needs of users. The first application of this kind is scheduled for setup on the network early in the new year. The Case Tracking Application, as it is known, is expected to be the foundation for additional efforts to improve the efficiency of case work at the Tribunal.

Some other accomplishments during the year include: better off-site computer support of Tribunal panel members in the form of portable computer systems, more secure access to the organization's main system from off-site locations and, with additional Personal Computers accessing the main computer system, other terminals have been freed for internal use reducing the inefficient sharing of terminals.

The future for 1992 includes: completing the evaluation of the new main computer system, implementing Phase I of the Case Tracking System, providing additional secure access to the main computer from remote locations, providing an automated help desk system, more efficient access to the computer for handicapped employees and computer based applications to aid in the daily working of the Tribunal.

Case Tracking

From 1987 to 1988, an Oracle based application was developed for the Tribunal to manage its caseload. For a variety of reasons, the Tribunal was not able to implement this system and decided to defer its case management project so that more immediate information technology needs could be met.

A new project to implement a system to keep track of cases was launched in April of this year. The consulting firm of Gellman and Hayward worked with Tribunal staff to develop a database, using dBase IV, that would automate the process of tracking cases. The decision to use dBase was based on available in-house expertise as a case tracking application had already been developed by the Statistical Research and Analysis Department. The new case tracking application was developed with this database as a model in order to provide continuity. All cases tracked on the old system will be added to the new system.

The new database will provide access to up-to-date information about all cases in the Tribunal system, i.e., it will provide information as to the current physical location and the current status of a file, which department and which staff member is working on the appeal, and which stage in the appeal process a case has reached. The database will therefore provide simple access to the chronology of a case and its current status, helping Tribunal staff to respond quickly to telephone inquiries. In addition, it will be possible to determine information about cases in general. For example, how many cases are at a given stage of the process at a given time. Inquiry screens for each department will provide information that should help departments assess current workload.

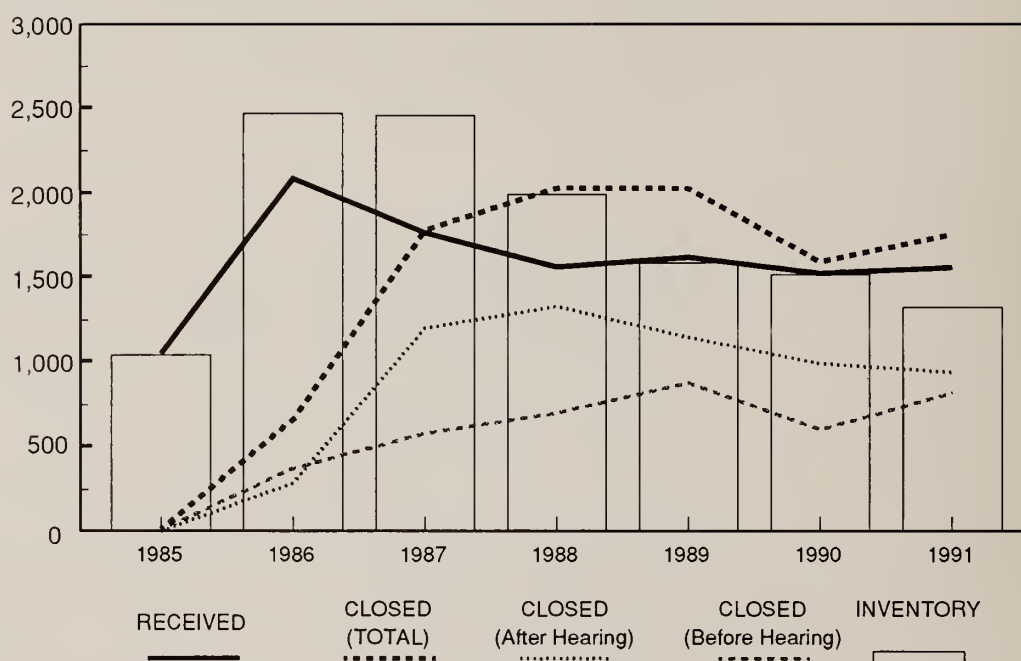
The Statistical Research and Analysis Department will use information in the database to develop reports that are based on an analysis of the data about individual cases. In other words, they will generate information about the Tribunal's caseload. (This has been done by the Department in the past, but with more limited information.) All of the information about cases that have already been decided will be converted to the new database.

YEAR END STATISTICAL SUMMARY

Introduction

This statistical report represents a detailed summary of the 1991 production figures. In general, the 1991 pattern was similar to the pattern for 1990, however in 1991 there were more files received (32 more than in 1990) and more files completed (167 more than in 1990). In addition, there was a more pronounced decrease in the overall case inventory in 1991 compared with 1990. (Figure 1)

Figure 1 — INCOMING FILES AND FILES COMPLETED



This statistical summary begins with an accounting of the numbers and types of cases received in the year in relation to other years. The next section focuses on closed cases, and gives details of how and when cases were closed in terms of the appeals process. There is then a further analysis which discusses typical stage completion times for 1991 cases.

The two key production measures, hearings and decisions, are then examined in detail. In this section, the hearings representation profiles for workers and for employers are presented and discussed in terms of their regional breakdowns. This section also presents the total number of hearings conducted in 1991 and the total number of decisions released in 1991.

The final section provides a breakdown of the 1991 year-end inventory of outstanding cases by appeals processing stage.

Cases Received

The general pattern of incoming cases for 1991 was quite similar to the 1990 pattern. In 1991, 1,552 cases were received. (Figure 2) This represents a small increase of 32 cases (2.1 per cent) over the 1990 incoming cases volume. Fifty-five per cent of the 1991 cases arose in response to WCB rulings regarding entitlement to WCB services, pensions, employer obligations and assessment rates. Thirty-five per cent of cases related to "special sections" of the *Workers' Compensation Act*. Ten per cent of the cases were "post-decision issues", including requests to reconsider previous Tribunal decisions, Ombudsman investigations and judicial reviews. (Figure 3)

Figure 2 — ANNUAL BREAKDOWN OF INCOMING CASES

Type	1988		1989		1990		1991		Total (All Years) [†]	
	Number	(%)	Number	(%)	Number	(%)	Number	(%)	Number	(%)
Section 86o	78	5.0	46	2.8	44	2.9	30	1.9	675	6.0
Section 15	89	5.7	89	5.5	120	7.9	127	8.2	669	6.0
Section 21	82	5.2	66	4.1	52	3.4	65	4.2	405	3.6
Section 77	257	16.5	295	18.2	279	18.4	318	20.5	1,623	14.5
Section 77 (Objection)	10	0.6	10	0.6	9	0.6	0	0.0	67	0.6
Special Section	516	33.0	506	31.3	504	33.2	540	34.8	3,439	30.8
Pension	45	2.9	40	2.5	21	1.4	2	0.1	570	5.1
Commutation	38	2.4	35	2.2	16	1.1	6	0.4	123	1.1
Employer Assessment	33	2.1	26	1.6	26	1.7	5	0.3	147	1.3
Entitlement	709	45.4	689	42.6	748	49.2	786	50.6	5,539	49.6
Reinstatement	n/a	0.0	n/a	0.0	1	0.1	31	2.0	32	0.3
Vocational Rehabilitation [‡]	n/a	0.0	n/a	0.0	0	0.0	1	0.1	1	0.0
Entitlement & Other	825	52.8	790	48.8	812	53.4	831	53.5	6,412	57.5
Judicial Review	4	0.3	2	0.1	10	0.7	4	0.3	29	0.3
Ombudsman's Request	84	5.4	108	6.7	82	5.4	63	4.1	408	3.7
Reconsideration	75	4.8	102	6.3	81	5.3	84	5.4	417	3.7
Clarification	2	0.1	1	0.1	0	0.0	0	0.0	4	0.0
Post-decision	165	10.6	213	13.2	173	11.4	151	9.7	858	7.7
No-jurisdiction	56	3.6	110	6.8	31	2.0	30	1.9	449	4.0
TOTAL INCOMING	1,562		1,619		1,520		1,552		11,158	

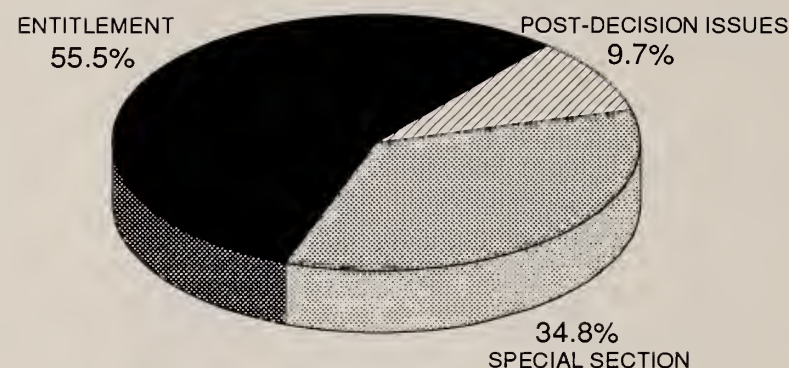
[†] Total (All Years) represents all cases, including those received prior to January 1, 1988.

[‡] This category refers to appeals related to the increased vocational rehabilitation requirements following Bill 162.

Appeals which may have related to other vocational rehabilitation issues are captured in the "entitlement" category.

Within these broad categories, some minor trends can be noted. Applications under section 86o of the *Workers' Compensation Act* (leave to appeal) continued to decrease in proportional terms. They represented 1.9 per cent of the 1991 incoming caseload compared with 6 per cent of the overall incoming caseload for all years combined. Conversely, appeals under section 77 (access to records) and applications under section 15 (right to sue) continued to increase marginally in proportional terms. Section 77 appeals represented 21 per cent of cases in 1991 compared with 15 per cent of the incoming caseload for all years combined, and section 15 applications represented 8 per cent of the 1991 incoming caseload compared with 6 per cent for all years combined.

Figure 3 — INCOMING CASELOAD BY TYPE



Post-decision issues include reconsideration applications, Ombudsman's inquiries and judicial review cases. Entitlement includes other related issues and no-jurisdiction cases.

Another difference was noted in terms of pension appeals which declined to 0.1 per cent of the 1991 incoming caseload against an overall proportion of 5 per cent for all years combined. As of the date of this report, the reason for this decline has not been isolated.

Ombudsman investigations and judicial reviews decreased in comparison with their 1990 proportions and requests for reconsideration maintained roughly the same proportion.

Finally, although they still represented a small proportion of the incoming caseload for 1991, 31 reinstatement cases were received. These were new appeal types for the Tribunal, since the *Workers' Compensation Act* was only recently amended to provide this right.

Figure 4 — ANNUAL BREAKDOWN OF CASES CLOSED

Type	1988		1989		1990		1991		Total (All Years) [†]
	Number	(%)	Number	(%)	Number	(%)	Number	(%)	Number (%)
Section 86o	125	6.2	121	6.0	56	3.5	53	3.0	649 6.6
Section 15	99	4.9	79	3.9	118	7.4	107	6.1	573 5.8
Section 21	87	4.3	73	3.6	46	2.9	66	3.8	389 4.0
Section 77	288	14.3	230	11.4	298	18.7	305	17.3	1,510 15.4
Section 77 (Objection)	15	0.7	7	0.3	9	0.6	5	0.3	61 0.6
Special Section	614	30.4	510	25.3	527	33.1	536	30.5	3,182 32.4
Pension	91	4.5	123	6.1	100	6.3	168	9.6	508 5.2
Commutation	26	1.3	46	2.3	29	1.8	10	0.6	118 1.2
Employer Assessment	26	1.3	24	1.2	28	1.8	22	1.3	126 1.3
Entitlement	1,096	54.3	1,015	50.3	684	43.0	788	44.8	4,690 47.7
Reinstatement	0	0.0	0	0.0	0	0.0	4	0.2	4 0.0
Entitlement & Other	1,239	61.4	1,208	59.9	841	52.9	992	56.4	5,446 55.4
Judicial Review	2	0.1	5	0.2	4	0.3	8	0.5	22 0.2
Ombudsman's Request	53	2.6	82	4.1	102	6.4	110	6.3	365 3.7
Reconsideration	52	2.6	103	5.1	82	5.2	74	4.2	355 3.6
Clarification	3	0.1	0	0.0	1	0.1	0	0.0	4 0.0
Post-decision	110	5.4	190	9.4	189	11.9	192	10.9	746 7.6
No-jurisdiction	56	2.8	108	5.4	34	2.1	38	2.2	449 4.6
TOTAL CLOSED	2,019		2,016		1,591		1,758		9,823

[†] Total (All Years) represents all cases, including those received prior to January 1, 1988.

Cases Closed

In 1991, the Tribunal closed 1,758 cases (Figure 4). This number represents 167 more cases than were closed in 1990, or an increase of 10.5 per cent.

Entitlement and related cases (pensions, employer assessments, reinstatement obligations and benefits entitlements) represented 56 per cent of the cases closed in 1991, special sections accounted for 31 per cent, post-decisions for 11 per cent, and issues that were not within the Tribunal's jurisdiction but were none the less pursued, accounted for the remaining 2 per cent.

Within these broad categories, one can note the continued decline in the proportion of section 86o leave applications and the slight increase in the proportions of section 77 appeals and section 15 applications. The proportion of pension appeals closed in 1991 increased in relation to other years. The latter increase results from the Tribunal's efforts at providing specific follow-up for many of the older pension cases, i.e., those cases that had been returned to the WCB for re-evaluation following changes in the Board's pension policy.

When examining the trends for closed cases, it is instructive to distinguish cases closed without decisions from cases closed by decision. When this distinction is made, one notes that the overall increase in closed cases in relation to the 1990 figure was driven by a marked increase in cases that did not require decisions. This trend can be seen by examining Figure 1 and noting that the trend line for cases closed without hearings rose quite sharply in 1991 and that by contrast, the line for cases closed after decisions actually dropped slightly.

The result was a net decrease in the proportion of cases closed by final decision. There was, however, a negligible decrease in the total number of decisions issued and that discrepancy is accounted for by an increase in the number of decisions required to close a case (an average of 1.12 in 1991 compared to 1.09 in 1990). This increase in the number of decisions required to close a case reflects an upward trend since 1988.

Case Completion Times

It is a difficult task to assess the “turnaround” time for typical appeals. The difficulty arises from the very nature of the appeals process. Most appeals are dealt with expeditiously, however, there are always a significant number which require substantially more time, often for reasons outside of the Tribunal’s control. Because of these unusual cases, the resulting distribution of completion time does not follow a “normal” distribution curve, and average completion times are therefore a misleading indication of the Tribunal’s typical performance. For this reason, in past years we have not reported overall portal-to-portal average completion times. This year, however, we have been experimenting with analyzing completion times in terms of percentile points. If the distribution curve of overall completion times is broken down into percentiles it is possible to say what percentage of cases has been completed within any chosen period of time. This type of analysis seems particularly useful and beginning with this report we plan to report completion times on this basis.

Accordingly, we can now report that nearly 40 per cent of cases completed in 1991 were completed within 6 months and 26 per cent between 6 and 12 months. Thus 65 per cent were completed in less than 12 months. Thirteen per cent took between 12 and 18 months, and the remaining 22 per cent required more than 18 months.

For purposes of comparison we have included comparable figures for 1989 and 1990. The 1991 figures compare well against the 1989 proportions, (in 1989, 33 per cent were completed within 6 months, 26 per cent between 6 and 12 months, and 17 per cent between 12 and 18 months) and the values appear generally similar to the 1990 proportions. (Refer to Figure 5)

Readers may be interested in a breakdown of these overall completion figures by appeal type and this may be seen in Figure 5 covering the years 1991, 1990 and 1989. The steady improvement in the Table, especially in the number of entitlement cases completed within 6 months may be of particular interest.

Figure 5 — DISTRIBUTIONS OF COMPLETION TIMES – FOR CASES FINISHED IN THE REPORTING YEAR

Type	Per Cent of Cases Completed											
	Within 6 Months			6 to 12 Months			12 to 18 Months			More Than 18 Months		
	1989	1990	1991	1989	1990	1991	1989	1990	1991	1989	1990	1991
Section 15	35	57	54	46	25	25	17	8	14	2	10	7
Sections 21 and 77	82	68	78	15	28	18	2	4	3	1	0	1
Entitlement-related [†]	12	17	26	30	40	33	25	19	19	33	24	22
Post-decision Issues	47	41	39	34	41	32	11	13	13	8	5	16
All Cases [‡]	33	35	39	26	34	26	17	13	13	24	18	22

[†] The entitlement-related category refers to entitlement appeals, pension appeals, appeals under section 96o, reinstatement appeals, employer assessment appeals and pension commutation issues. The cases that were reviewed at the WCB for chronic pain are excluded.

[‡] The total category (All Cases) includes all cases finished in the year, i.e., finished either by decision or by non-hearing disposition. Cases reviewed for chronic pain are included in this total category.

In order to present a more detailed picture of the typical completion time we have identified “stages” in the appeals process, and report “median”, or fiftieth percentile figures for each stage as reflecting the “typical” time cases spend in each stage. The median represents the middle-ranked value of a distribution, or the point at which half of the cases fall above and half fall below. Although it is not as commonly used as the arithmetic mean (or average), the median has the advantage of providing a better summary of the typical value of the distribution when the distribution is not normal. For this reason, we have now adopted the median as our method of depicting the typical stage processing times.

Figure 6 presents a summary of this analysis, giving the median stage times and their totals for 1989, 1990 and 1991 according to the following stage definitions:

Intake Work – The time between receiving the claim file from the Workers’ Compensation Board and acquiring all necessary documentation and approval from the appellant and other parties.

Assignment to a Tribunal Counsel Officer – The time between the completion of intake work and the start of the case description by a Tribunal Counsel Officer.

Case Description Preparation – The time required to write the case description.

Figure 6 — TYPICAL COMPLETION TIMES — BY STAGE

Appeal Processing Stage	1989 Median [†] Days	1990 Median [†] Days	1991 Median [†] Days
1. Intake Work	13	8	7
2. Assignment to TCO	28	21	11
3. Case Description Preparation	22	16	17
4. Preparation for Scheduling	11	20	14
5. Scheduling	22	29	37
6. Awaiting Hearing	63	60	59
7. Post-hearing and Decision	63	58	63
TOTAL	222	212	208

[†] See explanation of median measure in the text at page 33.

Preparation for Scheduling – The time between completing the case description and starting the case in scheduling. This involves processing the final draft of the case description, photocopying it (this is a significant undertaking), and distributing it to the necessary parties. This interval also includes the time which may have been required if there was a need to postpone the scheduling effort in order to review the case description more extensively in the Medical Liaison Office.

Scheduling – The time between assigning a case to a hearing coordinator and achieving the last scheduled hearing date. (In the event that a scheduling effort was cancelled one or more times, this category captured all the time until the last successful scheduling date was achieved.)

Awaiting Hearing – The time between the last scheduling effort and the hearing.

Post-Hearing and Decision Process – The time between the last hearing and the decision release. (Cases were included in this category if post-hearing TCO follow-up was required after the last hearing, provided the case did not also require re-scheduling or re-hearing. In the event that re-scheduling or re-hearing was required, the post-hearing time was then captured in categories 5 and 6.)

Examining the median data for cases leaving the various stages in 1991, we note that from the time the claim file arrived from the WCB, cases typically spent 7 days (the reference throughout is to calendar days) in the intake stage where the necessary forms and approvals were gathered and consolidated. Cases then spent 11 days in a review stage leading to their assignment to Tribunal Counsel Officers. Case descriptions were then completed, typically within the next 17 days. The next 14 days were spent printing, photocopying and distributing these case descriptions, and if necessary, reviewing them in the Medical Liaison Office. It then typically required 37 days to achieve the final scheduling date and 59 days waiting for the hearing. Decisions were typically completed 63 days after the last hearing. (This 63 days included decision writing and any additional TCO post-hearing activity, provided no other hearing was required.)

For appeals that experienced the typical time in each stage the overall turnaround time would have been 208 days, or 6.9 months, of which 2 months would have been spent waiting for the agreed-upon hearing date. Comparing this total for 1991 with the total for the previous years, we note improvements of 2 per cent and 6 per cent against the 1990 and 1989 totals, respectively. (In 1990, the typical stage ages summed to 212 days, or 7.1 months, and in 1989, the sum was 222 days, or 7.4 months.)

Hearings and Decisions

Hearings

In 1991, 1,085 cases went to hearing (or were assigned to Tribunal panels for deliberation). Some of these cases were heard (or assigned) more than once, resulting in a total of 1,214 hearings. In order to achieve the 1,214 hearings, 1,375 scheduling dates had to be arranged. (On occasion, hearings have to be rescheduled due to illnesses or other unavoidable conflicts.)

The 1,214 hearings included 1,014 (83 per cent) formal oral hearings, 132 (11 per cent) reviews of written submissions, and 68 (6 per cent) panel deliberations regarding requests to reconsider previous Tribunal decisions.

When formal hearings are conducted, they always involve a tripartite Tribunal panel (with a Vice-Chair and a Member Representative of employers and a Member Representative of workers) and parties are usually also accompanied by representatives.

Representation at Hearings

In approximately 38 per cent of cases heard formally in 1991, employers did not participate. When they did appear, their representation broke down as follows: a lawyer 25 per cent of the time, company personnel 14 per cent, a consultant 11 per cent, the Office of the Employer Adviser 6 per cent and "other" and "unknown" types 6 per cent.

The Office of the Worker Adviser was the single most common type of worker representative, accounting for 28 per cent of hearings. Lawyers or legal aid/assistants accounted for 24 per cent, and unions 15 per cent. Consultants accounted for 6 per cent of hearings, "other" types 5 per cent, and "unknown" types 1 per cent. Workers were unrepresented at the remaining 21 per cent of hearings.

When these figures are examined by region, as in Figure 7, we note some interesting variations from place to place. In the northern region, for example, company personnel were responsible for nearly 26 per cent of employer representation, and lawyers for as few as 15 per cent. In the southern region, by contrast, company personnel were noted less than 10 per cent of the time and consultants as often as 18 per cent.

Figure 7 — TRIBUNAL HEARINGS REPRESENTATION PROFILE

Representation by Region for Decisions Issued in 1991

	Eastern (%)	Northern (%)	Southern (%)	Toronto (%)	TOTAL (%)
Employer					
Company Personnel	17.9	25.5	9.5	13.2	14.3
Consultant	0.0	3.1	17.9	11.9	11.1
Lawyer	33.3	15.3	21.1	25.7	24.5
No Representation	35.9	43.8	35.8	37.6	38.0
Office of the Employer Adviser	7.7	7.1	10.5	5.6	6.3
Other	5.1	5.1	5.3	5.0	5.0
Unknown	0.0	0.0	0.0	0.9	0.7
Worker					
Consultant	0.0	0.0	2.1	7.2	5.6
Lawyer or Legal Aid / assistant	41.0	21.4	25.3	23.6	24.3
No Representation	17.9	7.1	11.6	25.1	21.5
Office of the Worker Adviser	28.2	58.2	24.2	23.7	27.6
Other	7.7	4.1	4.2	5.2	5.1
Union	5.1	9.2	32.6	14.4	15.3
Unknown	0.0	0.0	0.0	0.9	0.7

Note: The overall representation proportions are most similar to the Toronto proportions because most hearings were conducted there. The Eastern region is represented by WCAT hearings in Ottawa, the Northern region by Sault Ste. Marie, Sudbury, Timmins, and Thunder Bay hearings, and the Southern region by London and Windsor hearings.

For worker representation, consultants were less often present outside of Toronto. Of further note was the strong proportion of cases involving representation by the Office of the Worker Adviser in the northern region (58 per cent) compared with only 24 percent in Toronto. Also of interest was the large contingent of hearings involving workers represented by unions in the southern region (33 per cent) and the large contingent of hearings involving workers represented by lawyers or legal aid/assistants in the eastern region (41 per cent).

Decisions

In 1991, 951 cases were closed by decision. Some of these cases involved more than one decision, because there were occasionally interim issues to be resolved before the final issue at appeal could be dealt with. The total number of decisions reached 1,064. The breakdown by appeal type is given in Figure 8, and by decision type in Figure 9.

The figure for total decisions released in 1991 is nearly identical to the figure reported for the previous year. In 1991, there were only 19 fewer decisions released. However, the number of cases closed by decision in 1991 decreased more noticeably (951 in 1991 compared to 985 in 1990). This is because in 1991 interim decisions comprised a larger proportion of the decisions issued (10.9 per cent, compared with 6.3 per cent in 1990).

Figure 8 — HEARINGS AND DECISIONS

By Appeal Type in 1991

Type	Scheduling Dates Arranged	Hearings [†]	Cases Heard	Decisions Issued	Cases Closed by Decision
Section 15	103	67	55	58	51
Section 21	44	22	22	27	29
Section 77	170	161	157	156	151
Section 86o	30	31	31	38	36
Entitlement / Other	952	857	751	710	623
Reconsideration	76	76	69	75	61
TOTAL	1,375	1,214	1,085	1,064	951

[†] Hearings include oral hearings, written submissions, motions days and panel assignments for reconsideration requests

Figure 9 — DECISIONS ISSUED

By Decision Type

	Interim	Final	Addendum	Total
Appeal Issues	108	878	3	989
Reconsideration Issues	8	63	4	75
				1,064

Cases in Inventory

As of December 31, 1991, the Tribunal in the course of its existence had received 11,158 cases, and had closed 9,823. This left 1,335 in the total case inventory.

Of these cases, 859 (or 64 per cent) could be considered "active". An additional 364 (or 27 per cent) were "inactive", either in temporary "on hold" stages within the Tribunal (68 at the intake stage waiting for information, 189 scheduled and awaiting their hearing, and 80 at the post hearing stage awaiting responses to an interim decision) or in an indefinite "on hold" stage at the WCB pending their review for the chronic pain issue (27 cases).

Of the 859 "active" cases, 367 (43 per cent) had not yet reached the hearing stage. Of these, 87 were being processed in intake prior to assignment to lawyers or pre-hearing legal workers in TCO, 79 were active in TCO with a case description being prepared. Sixty-eight were being prepared for scheduling, and 133 were in the process of being scheduled.

Four hundred and ninety-two cases (57 per cent) had moved beyond the hearing stage. Most of these (456) were either at post-hearing work, having a decision prepared, or were recessed or adjourned. The remaining cases (36) had decisions written and released or were otherwise effectively resolved, and were in the final file-closing process.

The active and inactive categories account for 1,223 cases. The remaining 112 cases in inventory related to post-decision issue requests, where the Tribunal was being asked to reconsider earlier rulings (62 cases), or where there was an Ombudsman's investigation (43) or judicial review application (7) underway. (Figure 10)

Figure 10 — STATUS OF OPEN CASES

A) INACTIVE CASES			
Cases waiting for WCB files:	27	27	
Cases at WCAT:			
Intake: Awaiting case information	68		
Pre-hearing: Awaiting hearing date	189		
Post-hearing: Awaiting resolution of interim matter	80	337	364
B) ACTIVE CASES			
Cases at WCAT:			
Pre-hearing assignment	87		
Case description writing	79		
Pre-scheduling	68		
Scheduling	133		
Post-hearing	218		
Decision writing in progress	238		
File closing	36	859	859
C) POST-DECISION ISSUES			
Ombudsman review cases	43		
Requests for reconsideration	62		
Judicial review	7	112	112
TOTAL as at December 31, 1991			1,335

FINANCIAL MATTERS

As we present this Annual Report, the Statement of Expenditures for the year ended December 31, 1991, which follows, has not yet been subject to audit. A variance Statement also is included.

In 1991, the accounting firm of Deloitte and Touche completed a financial audit on the Tribunal's financial statements for the period ending December 31, 1990. The audit report is included as Appendix B.

Figure 11 — STATEMENT OF EXPENDITURES

As at December 31, 1991 (in \$000's)

	1991 BUDGET	1991 ACTUAL
<i>Salaries and Wages</i>		
1310 Salaries & Wages - Regular	6,116.0	5,820.5
1320 Salaries & Wages - Overtime	25.0	10.4
1325 Salaries & Wages - Contract	116.0	326.2
1510 Temporary Help - Go Temp.	10.0	0.0
1520 Temporary Help - Outside Agencies	90.0	55.6
Total Salaries and Wages	6,356.0	6,212.6
<i>Employee Benefits</i>		
2110 Canada Pension Plan		78.4
2130 Unemployment Insurance		143.6
2220 Public Service Pension Fund		313.5
2260 Unfunded Liab. - PSPF		125.4
2310 Ontario Health Tax		120.0
2320 Suppl. Health & Hospital Plan		38.8
2330 Long-term Income Protection		26.5
2340 Group Life Insurance		11.0
2350 Dental Plan		42.8
2410 Workers' Compensation		0.0
2520 Maternity Supp. Benefit All.		16.5
2620 Death Benefits		2.0
2990 Benefits Transfer		-3.5
Total Employee Benefits	826.0	915.1

STATEMENT OF EXPENDITURES – CONTINUED

As at December 31, 1991 (in \$000's)

	1991 BUDGET	1991 ACTUAL
<i>Transportation & Communication</i>		
3110 Courier/Other Delivery Charges	40.0	39.9
3111 Long Distance Charges	16.0	12.6
3112 Bell Tel. - Service, Equipment	28.0	24.3
3113 On-Line Communications	60.0	69.3
3210 Postage	23.0	14.9
3610 Travel - Accommodation & Food	60.0	66.8
3620 Travel - Air	57.0	71.0
3630 Travel - Rail	4.0	4.7
3640 Travel - Road	29.0	37.5
3660 Travel - Conferences, Seminars	25.0	29.6
3680 Travel - Attendance (Hearings)	60.0	48.5
3690 Travel - Professional/Public Outreach	5.0	1.3
3720 Travel - Other	3.0	3.9
3721 Travel - PT Vice-Chair & Reps.	48.0	42.5
Total Transportation & Communication	458.0	466.6
<i>Services</i>		
4124 External Education & Training	5.0	0.0
4130 Advertising - Employment	12.0	5.7
4210 Rentals - Computer Equipment	125.0	12.9
4220 Rentals - Office Equipment	2.0	1.5
4230 Rentals - Office Furniture	1.0	0.3
4240 Rentals - Photocopying	125.0	99.9
4260 Rentals - Office Space	984.0	963.4
4261 Rentals - Hearing Rooms	28.0	29.2
4270 Rentals - Other	1.0	1.3
4340 Receptions - Hospitality	30.0	25.7
4341 Receptions - Rentals	1.0	0.7
4350 Witness Fees	25.0	14.0
4351 Process Services - Subpoenas	5.0	3.9
4360 Per Diem Allowances - PT VC & Reps.	500.0	477.2
4410 Consultants - Mgt. Services	30.0	38.4
4420 Consultant - System Development	40.0	29.8
4430 Court Reporting Services	120.0	101.1
4431 Consultants - Legal Services	40.0	19.8
4435 Transcription	180.0	180.5
4440 Med. Fee - Per Diem/Retainer/Rep.	200.0	238.1
4470 Print - Dec./Newsletters/Pamphlets	135.0	71.3
4520 Repair/Main.-Furnit./Off. Equipment	120.0	130.9
4710 Other - incl. Membership Fees	50.0	45.2
4711 Translation & Interpret. Ser.	50.0	38.4
4712 Staff Development - Course Fees	40.0	41.1
4713 French Translation Services	10.0	11.4
4715 Services - WCB	0.0	185.8
Total Services	2,859.0	2,767.7

STATEMENT OF EXPENDITURES – CONTINUED

As at December 31, 1991 (in \$000's)

	1991 BUDGET	1991 ACTUAL
<i>Supplies & Equipment</i>		
5090 Projectors, Cameras, Screens	0.0	0.0
5110 Computer Equip. incl. Software	90.0	182.6
5120 Office Furniture & Equipment	30.0	24.2
5130 Office Machines	0.0	4.7
5710 Office Supplies	140.0	135.5
5720 Books, Publications, Reports	40.0	45.7
Total Supplies & Equipment	300.0	392.7
TOTAL OPERATING EXPENDITURES	10,799.0	10,754.7
Capital Expenditures	25.0	7.4
TOTAL EXPENDITURES	10,824.0	10,762.1

Figure 12 — VARIANCE REPORT 1991

As at December 31, 1991 (in \$000's)

	1991 Budget	1991 Actual	Variance	
			\$	%
Salaries and Wages	6,356.0	6,212.6	143.4	2.3
Employee Benefits	826.0	915.1	-89.1	-10.8
Transportation and Communications	458.0	466.6	-8.6	-1.9
Services	2,859.0	2,767.7	91.3	3.2
Supplies and Equipment	300.0	392.7	-92.7	-30.9
Total Operating Expenditures	10,799.0	10,754.7	44.3	0.4
Capital Expenditures	25.0	7.4	17.6	70.3
Total Expenditures	10,824.0	10,762.1	61.9	0.6

APPENDIX A

VICE-CHAIRS AND MEMBERS IN 1991

Date of First Appointment

Full-time

Chair

Ellis, S. Ronald	October 1, 1985
------------------	-----------------

Alternate Chair

Bradbury, Laura	June 1, 1988 (Resigned June 28, 1991)
Kenny, Lila Maureen	September 1, 1991

Vice-Chairs

Bigras, Jean Guy	May 14, 1986
Bradbury, Laura	October 1, 1985
Cook, Brian	September 6, 1991
Kenny, Lila Maureen	July 29, 1987
McCombie, Nick	January 22, 1991
McIntosh-Janis, Faye	May 14, 1986
Moore, John P.	July 16, 1986
Newman, Elaine	February 1, 1991
Onen, Zeynep	October 1, 1988
Sandomirsky, Janice R.	July 3, 1990
Signoroni, Antonio	October 1, 1985
Starkman, David K.L.	August 1, 1988
Strachan, Ian	October 1, 1985

Members Representative of Workers

Cook, Brian	October 1, 1985 ¹
Cook, Mary	November 1, 1990
Crocker, Jim	August 1, 1991

1 Mr. Cook resigned as a worker member on September 6, 1991. He was appointed a Vice-Chair on that day.

Heard, Lorne (on leave)	October 1, 1985
Jackson, Faith	December 11, 1985
Lebert, Raymond J.	June 1, 1988
McCombie, Nick	October 1, 1985 ¹
Robillard, Maurice	March 11, 1987
Shartal, Sarah	November 14, 1990
Thompson (Fuhrman), Patti	May 14, 1986

Members Representative of Employers

Apsey, Robert	December 11, 1985
Barbeau, Pauline	January 15, 1990
Chapman, Stanley	July 16, 1990
Jago, W. Douglas	October 1, 1985
Meslin, Martin	December 11, 1985
Nipshagen, Gerry M.	October 1, 1988
Preston, Kenneth	October 1, 1985

Part-time

Vice-Chairs

Chapnik, Sandra	March 11, 1987
Faubert, Marsha	December 10, 1987
Flanagan, Bill	June 1, 1991
Harris, Dan	April 15, 1991
Hartman, Ruth	December 11, 1985
Lax, Joan	May 14, 1986
Marafioti, Victor	March 11, 1987
Marcotte, William A.	May 14, 1986
McGrath, Joy	December 10, 1987
Pfeiffer, Byron E.	March 15, 1990
Robeson, Virginia	March 15, 1990
Singh, Vara	June 1, 1991
Sperdakos, Sophia	May 14, 1986
Stewart, Susan L.	May 14, 1986
Sutherland, Sara	September 6, 1991

1 Mr. McCombie resigned as a worker member on January 22, 1991. He was appointed a Vice-Chair on that day.

Members Representative of Workers

Beattie, David Bert	December 11, 1985
Drennan, George	December 11, 1985
Felice, Douglas H.	May 14, 1986
Fenton, Julie	December 19, 1991
Ferrari, Mary	May 14, 1986
Fox, Sam	June 20, 1991
Fuhrman, Patti	May 14, 1986 ¹
Higson, Roy	December 11, 1985
Klym, Peter	May 14, 1986
Rao, Fortunato	February 11, 1988

Members Representative of Employers

Clarke, Kenneth	August 1, 1989
Howes, Gerald	August 1, 1989
Jewell, Donna Marie	December 11, 1985
Kowalishin, A. Teresa	May 14, 1986
Ronson, John	December 11, 1985
Seguin, Jacques A.	July 1, 1986
Shuel, Robert	August 1, 1989
Sutherland, Sara	December 17, 1987 ²

VICE-CHAIRS AND MEMBERS — RE-APPOINTMENTS

In 1991, the Tribunal Chair, full- and part-time Vice-Chairs and Members, were re-appointed to the Appeals Tribunal for the terms indicated below:

	Date of Re-Appointment	Term (in years)
Full-time		
Tribunal Chair		
Ellis, S. Ronald	October 1, 1991	3
Vice-Chairs		
Moore, John	May 1, 1991	3

1 Ms. Fuhman's (Thompson's) appointment became full-time, effective October 9, 1991.

2 Ms. Sutherland resigned as an employer Member on September 6, 1991. She was appointed a part-time Vice-Chair on that day.

Onen, Zeynep	October 1, 1991	3
Signoroni, Antonio	October 1, 1991	3
Strachan, Ian	May 1, 1991	3

Members Representative of Employers

Apsey, Robert	December 11, 1991	3
Meslin, Martin	August 1, 1991	3

Members Representative of Workers

Lebert, Ray	June 1, 1991	3
-------------	--------------	---

Part-time

Vice-Chairs

Hartman, Ruth	December 11, 1991	3
---------------	-------------------	---

Members Representative of Employers

Ronson, John	December 11, 1991	3
--------------	-------------------	---

Members Representative of Workers

Beattie, David Bert	December 11, 1991	3
Drennan, George	December 11, 1991	3
Fox, Sam	June 20, 1991	1
Higson, Roy	December 11, 1991	3
Rao, Fortunato	February 11, 1991	3

VICE-CHAIRS AND MEMBERS — EXPIRED APPOINTMENTS AND RESIGNATIONS

The following is a list of Order-in-Council appointments who resigned or whose appointments expired during 1991.

- Bradbury, Laura, Vice-Chair and Alternate Chair
- Chapnik, Sandra, Vice-Chair (part-time)
- Clarke, Kenneth, Member Representative of Employers (part-time)
- Jewell, Donna, Member Representative of Workers (part-time)
- Lax, Joan, Vice-Chair (part-time)
- Marcotte, William, Vice-Chair (part-time)
- Starkman, David K.L., Vice-Chair

NEW APPOINTMENTS DURING 1991

Maureen Kenny

(Alternate Chair) September 1, 1991

The position of Alternate Chair involves both senior management and adjudicative functions. The Alternate Chair is also the “vice-chair” who, according to the provisions of the Workers’ Compensation Act, is to act in the Chair’s place, should he be absent from Ontario or otherwise unable to act. Maureen Kenny was appointed as the Tribunal’s Alternate Chair on September 1, 1991. Her appointment as a Vice-Chair was first made on July 30, 1987. From October 1985 until that time, Ms. Kenny was employed as the Tribunal’s Counsel to the Chair. Previously, she had been a policy analyst with the (Ontario) Ministry of Labour and had practised labour law. She is well experienced in workers’ compensation and administrative law matters.

Brian Cook

(Full-time Vice-Chair) September 6, 1991

Mr. Cook’s appointment as a full-time Vice-Chair marked the second time that one of the Tribunal’s Representative Members was appointed to this position. He was first appointed to the Tribunal in October 1985 as a full-time Member representative of workers.

Jim Crocker

(Full-time Member representative of workers) August 1, 1991

Jim Crocker is an experienced workers’ compensation advocate who, at the time of his appointment to the Appeals Tribunal, was Chair of the CAW’s Workers’ Compensation Committee.

Julie Fenton

(Part-time Member representative of workers) December 19, 1991

Ms. Fenton has worked with the Canadian Labour Congress for 15 years, and is currently a member of the OPEIU pension negotiating committee and is her union local’s fourth vice-president. She is fluent in the French language.

Bill Flanagan

(Part-time Vice-Chair) June 1, 1991

Bill Flanagan is a visiting professor of law at Osgoode Hall Law School with an interest in the area of administrative law. Professor Flanagan has graduate degrees in law from Columbia University and the University of Paris I (Sorbonne).

Dan Harris

(Part-time Vice-Chair) April 15, 1991

Dan Harris is currently in practice in Toronto as a labour arbitrator. He is also a referee and adjudicator at the Office of Adjudication. He was called to the Bar of Ontario in 1984.

Nick McCombie

(Full-time Vice-Chair) January 22, 1991

Nick McCombie was the first of the Tribunal's Representative Members to be appointed as a Vice-Chair. He was first appointed to the Tribunal in October 1985 as a full-time Member representative of workers. Mr. McCombie is one of the authors of a textbook on workers' compensation.

Elaine Newman

(Full-time Vice-Chair) February 1, 1991

Elaine Newman was first employed as a senior lawyer in the Tribunal's Counsel Office in 1985. In July 1986, she was appointed as a Vice-Chair. From September 1988 to June 1989, Ms. Newman was the Tribunal's General Counsel. She left at that time to take up a position in private practice where she was very active in a counsel and consulting role in the workers' compensation field, acting for both workers and employers.

Vara Singh

(Part-time Vice-Chair) June 1, 1991

Prior to her appointment at the Appeals Tribunal, Dr. Singh was an adjudicative member of the Immigration and Refugee Board of Canada for two years. She has doctorate degrees in zoology and education, and a Master's degree in social work.

Sara Sutherland

(Part-time Vice-Chair) September 6, 1991

Ms. Sutherland's appointment as a part-time Vice-Chair is the third appointment of a Tribunal Representative Member to a Vice-Chair position. She is currently in her third year of law school. Prior to entering law school, Ms. Sutherland had a long career with Ontario Hydro. She was first appointed a part-time member representative of employers in 1987.

Patti (Fuhrman) Thompson

(Full-time Member representative of workers) October 9, 1991

Patti Thompson was first appointed to the Tribunal as a part-time worker Member in May 1986. Prior to her full-time appointment, Ms. Thompson was an employment equity consultant with the Toronto-Dominion Bank and an OPSEU nominee in Ontario Labour Relations Cases.

SENIOR STAFF

The following is a list of the senior staff who were employed at the Appeals Tribunal during the reporting period.

Beverley Dalton	Chief Administration Officer
Linda Moskovits	Chief Information Officer
Eleanor Smith	Tribunal General Counsel
Peter Taylor	Manager, Financial Administration
Carole Trethewey	Counsel to the Tribunal Chair

MEDICAL COUNSELLORS

The following is a list of the Tribunal's Medical Counsellors.

Dr. Douglas P. Bryce	Otolaryngology
Dr. W. R. Harris	Orthopaedics (Acting)
Dr. F. H. Lowy	Psychiatry
Dr. Robert L. MacMillan	Internal Medicine
Dr. Thomas P. Morley	Neurology
Dr. John S. Speakman	Ophthalmology
Dr. Neil Watters	General Surgery

APPENDIX B

WORKERS' COMPENSATION APPEALS TRIBUNAL

REPORT AND FINANCIAL STATEMENTS DECEMBER 31, 1990

Auditors' Report

To the Workers' Compensation Appeals Tribunal

We have audited the balance sheet of Workers' Compensation Appeals Tribunal as at December 31, 1990 and the statements of expenditures and Workers' Compensation Board funding for the year then ended. These financial statements are the responsibility of the Tribunal's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Tribunal as at December 31, 1990 and the results of its operations and Workers' Compensation Board funding for the year then ended in accordance with the accounting policies described in Note 2 to the financial statements.

Deloitte and Touche
Chartered Accountants
Toronto, Ontario
November 1, 1991

BALANCE SHEET

As at December 31, 1990

	<u>1990</u>	<u>1989</u>
ASSETS		
Cash in bank	\$ 616,000	\$ —
Receivable from Workers' Compensation Board	1,511,500	2,260,400
Salary and wages recoverable	23,600	\$ —
Accounts receivable	<u>8,300</u>	<u>8,400</u>
	<u>\$2,159,400</u>	<u>\$2,268,800</u>
LIABILITIES		
Bank indebtedness	\$ —	\$318,400
Accounts payable and accrued liabilities	759,400	550,400
Operating advance from Workers' Compensation Board	<u>1,400,000</u>	<u>1,400,000</u>
	<u>\$2,159,400</u>	<u>\$2,268,800</u>

Approved on Behalf of the Tribunal

S.R. Ellis, Chairman

STATEMENT OF EXPENDITURES

Year Ended December 31, 1990

	<u>1990</u>	<u>1989</u>
Salaries and wages	\$5,400,500	\$4,656,300
Employee benefits	760,600	447,800
Transportation and communication	423,600	417,300
Services	2,542,900	2,633,900
Supplies and equipment	<u>268,700</u>	<u>193,600</u>
Total operating expenditures	9,396,300	8,348,900
Capital expenditures	<u>53,200</u>	<u>148,500</u>
Total expenditures	<u>\$9,449,500</u>	<u>\$8,497,400</u>

STATEMENT OF WORKERS' COMPENSATION BOARD FUNDING

Year Ended December 31, 1990

	<u>1990</u>	<u>1989</u>
Recoverable expenditures	\$ 9,449,500	\$ 8,497,400
Reimbursement from WCB	<u>10,198,400</u>	<u>8,548,800</u>
Change in receivable from WCB	(748,900)	(51,400)
Receivable from WCB — beginning of year	<u>2,260,400</u>	<u>2,311,800</u>
Receivable from WCB — end of year	<u>\$1,511,500</u>	<u>\$2,260,400</u>

See accompanying notes to financial statements.

NOTES TO FINANCIAL STATEMENTS

December 31, 1990

1. General

The Tribunal was created by the Workers' Compensation Amendment Act, S.O. 1984, Chapter 58 - Section 32, which came into force on October 1, 1985.

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner, appeals by workers and employers from decisions, orders or rulings of the Workers' Compensation Board ("WCB"), and any matters or issues expressly conferred upon the Tribunal by the Act.

2. Significant Accounting Policies

The Tribunal's financial statements are prepared in accordance with generally accepted accounting principles except for capital expenditures which are charged to expense in the year of acquisition.

3. Commitments

The Tribunal has commitments under an operating lease requiring minimum annual lease payments as follows:

1991	780,960
1992	780,960
1993	780,960
1994	780,960
1995 and thereafter	<u>\$1,041,280</u>
	<u>\$4,165,120</u>

